165-323

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 31.

RUFUS E. GRAVES, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

FILED FEBRUARY 23, 1893.

(15,267.)

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1 THE UNITED STATES OF AMERICA, } ss:
Northern District of Iowa, }

Pleas before the district court of the United States in and for the northern district of Iowa, eastern division, at the term begun and holden at Dubuque, in said district, on the first Tuesday in April, A. D. 1890, before the Hon. Oliver P. Shiras, judge of said district court.

UNITED STATES OF AMERICA } No. 3302. Indictment.
vs.
RUFUS E. GRAVES. }

Be it remembered that heretofore, to wit, on the 9th day of April, A. D. 1890, the same being the eighth day of the regular April, A. D. 1890, term of said court, the following proceedings were had in said cause and entered of record, as appears on page 68 of Minutes H of the records of said court, to wit:

UNITED STATES OF AMERICA } No. 3303. Presentment, Indictment.
vs.
RUFUS E. GRAVES. }

Now, this 9th day of April, A. D. 1890, the grand jury in and for the aforesaid district, heretofore duly empanelled, came *came* into court and, by their foreman, presented to the court a true bill of indictment against Rufus E. Graves, charging him with the crime of making false entries in reports to comptroller, committed within the jurisdiction of this court; whereupon, on motion of M. D. O'Connell, U. S. district attorney—

It is ordered by the court that said bill of indictment be received and filed; and thereupon the same was duly endorsed by the clerk as follows:

Presented in open court by the foreman of the grand jury in the presence of said grand jury and filed by me this 9th day of April, A. D. 1890.

2–11 That on said 9th day of April, A. D. 1890, there was filed in the office of the clerk of said court in said cause the indictment referred to in the foregoing record entry; which indictment is in the words and figures following, to wit:

* * * * * * *

12 *Fourth Count.*

And the grand jury aforesaid on their oaths aforesaid do further find and present that said Rufus E. Graves, late of said northern district of Iowa, on the 5th day of August, A. D. 1887, at the county of Dubuque, in the northern district of Iowa and within the jurisdiction of the court, did then and there knowingly, willfully, and unlawfully make a certain false entry in a certain report of the Commercial National Bank of Dubuque, the Commercial

National Bank of Dubuque aforesaid being a national banking association duly organized, incorporated, and doing a banking business, under and by virtue of the laws of the United States of America, at the city of Dubuque, in the county of Dubuque and State of Iowa, of which said association the said Rufus E. Graves was then and there the president and a director; which said report in which said false entry was then and there made as aforesaid was a report of said association in that behalf required by law to be made to the Comptroller of the Currency, to wit, a report of the condition of the Commercial National Bank of Dubuque aforesaid at the close of business on the 1st day of August, A. D. 1887, and which said false entry then and there made as aforesaid is as follows, to wit, under the head of—

Resources.

2. Overdrafts 2,948 58

which entry so made as aforesaid in said report under the heading resources did in substance and effect declare as follows, to wit:

Entry number 2. Overdrafts 2,948 58

did in substance and effect declare that divers persons, firms, and corporations to the grand jurors aforesaid unknown were then and there indebted to the Commercial National Bank of Dubuque aforesaid in divers amounts to the said grand jurors unknown, amounting in the aggregate to two thousand nine hundred and forty-eight dollars and fifty eight cents, for money withdrawn from the Commercial National Bank of Dubuque aforesaid by said persons, firms, or corporations and paid to said persons, firms, and corporations by said bank in excess of the aggregate sums and amounts said persons, firms, and corporations were entitled to withdraw and receive from said bank, and the grand jurors aforesaid do further say that the said entry so made as aforesaid was then and there false, in this, to wit, that the aggregate sum and amount withdrawn from the Commercial National Bank of Dubuque aforesaid by said divers persons, firms, and corporations and received by said persons, firms, and corporations in excess of the aggregate sums and amounts which said persons, firms, and corporations were entitled to withdraw and receive from said bank and which should have been placed in said entry was much larger than said sum of two thousand nine hundred and forty-eight dollars and fifty-eight cents by many thousands of dollars, the particular sum and amount thereof being to the said grand jurors unknown, he, the said Rufus E. Graves, then and there well knowing said entries to be then and there false, and the said Rufus E. Graves did then and there make the said false entry in the aforesaid report with the intent then and there willfully, wrongfully, and unlawfully to deceive any agent then or who might thereafter be appointed under title LXII of the Revised Statutes of the United States to examine the affairs of the Commercial National Bank of Dubuque aforesaid, and with the intent then and there willfully, wrongfully, and unlawfully to deceive certain

officers of the Commercial National Bank of Dubuque aforesaid, the name- of whom are to the grand jurors unknown, and with the intent then and there willfully, wrongfully, and unlawfully to deceive and defraud the Commercial National Bank of Du-
13 buque aforesaid and divers other corporation-, firms, and persons who were then doing or who might thereafter do business with the Commercial National Bank of Dubuque aforesaid, the names of said corporations, firms, and persons being to the grand jurors unknown, contrary to the form of statute in such case made and provided and against the peace and dignity of the United States of America.

Fifth Count.

And the grand jury aforesaid on their oaths aforesaid do further find and present that said Rufus E. Graves, late of said northern district of Iowa, on the 5th day of August, A. D. 1887, at the county of Dubuque, in the northern district of Iowa and within the jurisdiction of the court, did then and there knowingly, willfully, and unlawfull*u* make a certain false entry in a certain report of the Commercial National Bank of Dubuque, the Commercial National Bank of Dubuque aforesaid being a national banking association duly organized, incorporated, and doing a banking business, under and by virtue of the laws of the United States of America, at the city of Dubuque, in the county of Dubuque and State of Iowa, of which said association the said Rufus E. Graves was then and there the president and a director; which said report in which said false entry was then and there made as aforesaid was a report of said association in that behalf required by law to be made to the Comptroller of Currency, to wit, a report of the condition of the Commercial National Bank of Dubuque aforesaid at the close of business on the 1st day of August, A. D. 1887, and which said false entry then and there made as aforesaid is as follows, to wit. in the schedule under the heading of "Loans and discounts" in said report appeared an entry in the words and figures following, to wit:

Liabilities of directors (individual and firm) as payers.. $69,500 00

which said entry so made as aforesaid in said report did in effect and substance declare that the Commercial National Bank of Dubuque aforesaid had on hand at the close of business on the 1st day of August, A. D. 1887, divers promissory notes and bills of exchange and other obligations or evidence- of indebtedness which were then and there unpaid and which did not exceed the aggregate amount of sixty-nine thousand five hundred dollars and no cents, which said notes, bills of exchange, obligations, or evidences of indebtedness were either made, drawn, or accepted by persons who were then and there directors of said banking associations or by firms or corporations composed in part of such directors, and which said notes, bills of exchange, obligations, or evidences of indebtedness had been discounted or purchased by the Commercial National Bank of Dubuque aforesaid and were then and there held and owned by said banking association; and the grand jurors aforesaid

do further say that the said last-mentioned entry so made as last aforesaid in said report was then and there false, in this, to wit, that the aggregate liabilities of the directors of the Commercial National Bank of Dubuque aforesaid as payers upon notes, bills of exchange, obligations, and evidences of indebtedness held by said bank at the close of business on the 1st day of August, A. D. 1887, was then and there many thousands of dollars in excess of the amount stated in said entry last aforesaid in said schedule of said *said* report, the particular amount being to the said grand jurors unknown, he, the said Rufus E. Graves, — there well knowing each and
14 & 15 all of the said entry to be then & there false, & the said Rufus E. Graves did then & there make each & all of the said false entry in the aforesaid report with the intent then and there willfully, wrongfully, and unlawfully to deceive any agent then or who might thereafter be appointed under title LXII of the Revised Statutes of the United States to examine the affairs of the Commercial National Bank of Dubuque aforesaid, and with the intent then and there willfully, wrongfully, and unlawfully to deceive certain officers of the Commercial National Bank of Dubuque aforesaid, the names of whom are to the grand jurors unknown, and with the intent then and there willfully, wrongfully, and unlawfully to deceive and defraud the Commercial National Bank of Dubuque aforesaid and divers other corporations, firms, and persons who were then doing or who might thereafter do business with the Commercial National Bank of Dubuque aforesaid, the names of said corporations, firms, and persons being to the grand jurors unknown, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

* * * * * * *

16 *Seventh Count.*

And the grand jury aforesaid on their oaths aforesaid do further find and present that said Rufus E. Graves, late of said northern district of Iowa, on the 10th day of October, A. D. 1887, at the county of Dubuque, in the northern district of Iowa and within the jurisdiction of the court, did then and there knowingly, willfully, and unlawfully make a certain false entry in a certain report of the Commercial National Bank of Dubuque, the Commercial National Bank of Dubuque aforesaid being a national banking association duly organized, incorporated, and doing a banking business, under and by virtue of the laws of the United States of America, at the city of Dubuque, in the county of Dubuque and State of Iowa, of which said association the said Rufus E. Graves was then and there a director and the president; which said report in which said false entry was then and there made as aforesaid was a report of said association in that behalf required by law to be made to the Comptroller of the Currency, to wit, a report of the condition of the Commercial National Bank of Dubuque aforesaid at the close of business on the 5th day of October, A. D. 1887, and which said false entry then and there made as aforesaid is as follows, to wit:

17 Under head of—

Resources.

2. Overdrafts $5,344 60

which entry so made as aforesaid in said report under the heading resources did in substance and effect declare as follows, to wit, entry number 2, overdrafts, $5,344.60, did in substance and effect declare that divers persons, firms, and corporations to the grand jurors aforesaid unknown were then and there indebted to the Commercial National Bank of Dubuque aforesaid in divers amounts to the said grand jurors unknown, amounting in the aggregate to five thousand three hundred and forty-four dollars and sixty cents for money withdrawn from the Commercial National Bank of Dubuque aforesaid by said persons, firms, or corporations and paid to said persons, firms, and corporations by said bank in excess of the aggregate sums and amounts said persons, firms, and corporations were entitled to withdraw and receive from said bank, and the grand jurors aforesaid do further say that the said entry so made as aforesaid was then and there false, in this, to wit, that the aggregate sum and amount withdrawn from the Commercial National Bank of Dubuque aforesaid by said divers persons, firms, and corporations and received by said persons, firms, and corporations in excess of the aggregate sums and amounts which said persons, firms, and corporations were entitled to withdraw and receive from said bank and which should have been placed in said entry was much larger than the said sum of five thousand three hundred and forty-four dollars and sixty cents by many thousands of dollars, the particular sum and amount thereof being to the said grand jurors unknown, he, the said Rufus E. Graves, then and there well knowing said entry to be then and there false, and the said Rufus E. Graves did then and there make the said false entry in the aforesaid report with the intent then and there willfully, wrongfully, and unlawfully to deceive any agent then or who might thereafter be appointed under title LXII of the Revised Statutes of the United States to examine the affairs of the Commercial National Bank of Dubuque aforesaid and with the intent then and there willfully, wrongfully, and unlawfully to deceive certain officers of the Commercial National Bank of Dubuque aforesaid, the names of whom are to the grand jurors unknown, and with the intent then and there willfully, wrongfully, and unlawfully to deceive and defraud the Commercial National Bank of Dubuque aforesaid and divers other corporations, firms, and persons who were then doing or who might thereafter do business with the Commercial National Bank of Dubuque aforesaid, the names of said corporations, firms, and persons being to the grand jurors unknown, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Eighth Count.

And the grand jurors aforesaid on their oaths aforesaid do further find and present that said Rufus E. Graves, late of said northern district of Iowa, on the 10th day of October, A. D. 1887, at the county of Dubuque, in the northern district of Iowa and within the jurisdiction of the court, did then and there knowingly, willfully, and unlawfully make a certain false entry in a certain report of the Commercial National Bank of Dubuque, the Commercial National Bank of Dubuque aforesaid being a national banking association duly organized, incorporated, and doing a banking business, under and by virtue of the laws of the United States of America, at the city of Dubuque, in the county of Dubuque and State of 18 Iowa, of which said association the said Rufus E. Graves was then and there a director and the president; which said report in which said false entry was then and there made as aforesaid was a report of said association in that behalf required by law to be made to the Comptroller of Currency, to wit, a report of the condition of the Commercial National Bank of Dubuque aforesaid at the close of business on the 5th day of October, A. D. 1887, and which said false entry then and there made as aforesaid is as follows, to wit, in the schedule under the heading of "Loans and discounts" in said report appeared an entry in the words and figures following, to wit:

Liabilities of directors (individual and firm), as payers.. $49,867 40

which said entry so made as aforesaid in said report did in effect and substance declare that the Commercial National Bank of Dubuque aforesaid had on hand at the close of business on the 5th day of October, A. D. 1887, divers promissory notes and bills of exchange and other obligations or evidences of indebtedness which were then and there unpaid and which did not exceed the aggregate amount of forty-nine thousand eight hundred and sixty-seven dollars and forty cents, which said notes and bills of exchange, obligations, or evidences of indebtedness were either made, drawn, or accepted by persons who were then and there directors of said banking association or by firms or corporations composed in part of such directors, and which said notes, bills of exchange, obligation-, or evidences of indebtedness had been discounted or purchased by the Commercial National Bank of Dubuque aforesaid and were then and there held and owned by said banking association; and the grand jurors aforesaid do further say that the said last-mentioned entry so made as last aforesaid in said report was then and there false, in this, to wit, that the aggregate liabilities of the directors of the Commercial National Bank of Dubuque aforesaid as payers upon notes, bills of exchange, obligations, and evidences of indebtedness held by said bank at the close of business on the 5th day of October, A. D. 1887, was then and there many thousands of dollars in excess of the amount stated in said entry last aforesaid in said schedule of said report, the particular amount being to the said grand jurors unknown, he, the said Rufus E. Graves — there

well knowing each and all of said entry to be then and there false, and the said Rufus E. Graves did then and there make each and all of the said false entry in the aforesaid report with the intent then and there willfully, wrongfully, and unlawfully to deceive any agent then or who might thereafter be appointed under title LXII of the Revised Statutes of the United States to examine the affairs of the Commercial National Bank of Dubuque aforesaid and with the intent then and there willfully, wrongfully, and unlawfully to deceive certain officers of the Commercial National Bank of Dubuque aforesaid, the names of whom are to the grand jurors unknown, and with the intent then and there willfully, unlawfully, and wrongfully to deceive and defraud the Commercial National Bank of Dubuque aforesaid and divers other corporations, firms, and persons who were then doing or who might thereafter do business with the Commercial National Bank of Dubuque aforesaid, the names of said corporations, firms, and persons being to the grand jurors unknown, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

19 *Ninth Count.*

And the grand jury aforesaid on their oaths aforesaid do further find and present that said Rufus E. Graves, late of said northern district of Iowa, on the 5th day of August, A. D. 1887, at the county of Dubuque, in the northern district of Iowa and within the jurisdiction of the court, did then and there knowingly, wrongfully, and unlawfully make a certain false entry in a certain report of the Commercial National Bank of Dubuque, the Commercial National Bank of Dubuque aforesaid being then a national banking association duly organized and incorporated and doing banking business, under and by virtue of the laws of the United States of America, at the city of Dubuque, in the county of Dubuque and State of Iowa, of which said association the said Rufus E. Graves was then and there the president and a director; which said report in which said false entry was then and there made as aforesaid was a report of said association in that behalf required by law to be made to the Comptroller of the Currency, to wit, a report of the condition of the Commercial National Bank of Dubuque aforesaid at the close of business on the 1st day of August, A. D. 1887, and which said false entry then and there made as aforesaid is as follows, to wit, under the head of—

Resources.

1. Loans and discounts (see schedule)..... 551,048 60

which entry so made as aforesaid in said report under the heading of resources did in substance and effect declare as follows, to wit:

Entry number 1. Loans and discounts..... 551,048 60

did in substance and effect declare that the Commercial National Bank of Dubuque aforesaid had on hand at the close of business

on said 1st day of August, A. D. 1887, divers promissory notes and bills of exchange made and executed by divers persons, firms, and corporations; which said promissory notes and bills of exchange were then and there unpaid and were of the aggregate sum and amount of five hundred and fifty-one thousand and forty-eight dollars and sixty cents; which said promissory notes and bills of exchange had been duly and regularly discounted or purchased by the Commercial National Bank of Dubuque aforesaid, and of which the Commercial National Bank of Dubuque aforesaid was then and there the true and lawful owner for value, and which said promissory notes and bills of exchange were then and there a resource of said bank to the amount of five hundred and fifty-one thousand and forty-eight dollars and sixty cents; and the grand jurors aforesaid do further say that said entry so made as aforesaid was then and there false, in this, to wit, that the Commercial National Bank of Dubuque aforesaid was not then and there the true and lawful owner and holder of unpaid promissory notes and bills of exchange which were then and there a resource of said bank to the amount of five hundred and fifty-one thousand and forty-eight dollars and sixty cents, and that the aggregate sum and amount of the promissory notes and bills of exchange held and owned by said Commercial National Bank of Dubuque aforesaid at the close of business on the 1st day of August, A. D. 1887, was many thousand dollars less than the amount stated in said entry, the particular sum and amount thereof being to the grand jurors unknown, he, the said Rufus E. Graves, then and there well knowing the said entry to be then and there false, and the said Rufus E. Graves did then and there make the said false entry in the aforesaid report with the intent then and there willfully, wrongfully, and unlawfully to deceive any agent then or who might thereafter be appointed under title LXII of the Revised Statutes of the United States to examine the affairs of the Commercial National Bank of Dubuque aforesaid, and with the intent then and there willfully, wrongfully, and unlawfully to deceive certain officers of the Commercial National Bank of Dubuque aforesaid, the names of whom are to the grand jurors unknown, and with the intent then and there willfully, wrongfully, and unlawfully to deceive and defraud the Commercial National Bank of Dubuque aforesaid and divers other corporations, firms, and persons who were then doing or might thereafter do business with the Commercial National Bank of Dubuque aforesaid, the names of said corporations, firms, and persons being to the grand jurors unknown, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Tenth Count.

And the grand jury aforesaid on their oaths aforesaid do further find and present that the said Rufus E. Graves, late of said northern district of Iowa, on the 10th day of October, A. D. 1887, at the county of Dubuque, in the northern district of Iowa and

within the jurisdiction of the court, did then and there knowingly, wrongfully, and unlawfully make a certain false entry in a certain report of the Commercial National Bank of Dubuque, the Commercial National Bank of Dubuque aforesaid being then a national banking association duly organized, incorporated, and doing a banking business, under and by virtue of the laws of the United States of America, at the city of Dubuque, in the county of Dubuque and State of Iowa, of which said association the said Rufus E. Graves was then and there the president and a director; which said report in which said false entry was then and *their* made as aforesaid was a report of said association in that behalf required by law to be made to the Comptroller of the Currency, to wit, a report of the condition of the Commercial National Bank of Dubuque aforesaid at the close of business on the 5th day of October, A. D. 1887, and which said false entry then and there made as aforesaid is as follows, to wit:

Under head of—

Resources.

1. Loans and discounts (see schedule)..... ..... 491,592 85

which entry so made as aforesaid in said report under the heading of resources did in substance and effect declare as follows, to wit, entry number 1, loans and discounts, 491,592.85, did in substance and effect declare that the Commercial National Bank of Dubuque aforesaid had on hand at the close of business on said 5th day of October, A. D. 1887, divers promissory notes and bills of exchange made and executed by divers persons, firms, and corporations, which said promissory notes and bills of exchange were then and there unpaid and were of the aggregate sum and amount of four hundred and ninety-one thousand five hundred and ninety-two dollars and eighty-five cents, which said promissory notes and bills of exchange had been duly and regularly discounted or purchased by the Commercial National Bank of Dubuque aforesaid, and of which the Commercial National Bank of Dubuque aforesaid was then and there the true and lawful owner for value, and which said promis-
21–29 sory notes and bills of exchange were then and there a resource of said bank to the amount of four hundred and ninety-one thousand five hundred and ninety-two dollars and eighty-five cents; and the grand jurors aforesaid do further say that said entry so made as aforesaid was then and there false, in this, to wit, that the Commercial National Bank of Dubuque aforesaid was not then and there the true and lawful owner and holder of unpaid promissory notes and bills of exchange which were then and there a resource of said bank to the amount of four hundred and ninety-one thousand five hundred and ninety-two dollars and eighty-five cents, and that the aggregate sum and amount of the promissory notes and bills of exchange held and owned by said Commercial National Bank of Dubuque aforesaid at the close of business on the 5th day of October, A. D. 1887, was many thousand dollars less than the amount stated in said entry, the particular sum and amount thereof

being to the grand jurors unknown, he, the said Rufus E. Graves, then and there well knowing the said entry to be then and there false, and the said Rufus E. Graves did then and there make the said false entry in the aforesaid report with the intent then and there willfully, wrongfully, and unlawfully to deceive any agent then or who might thereafter be appointed under title LXII of the Revised Statutes of the United States to examine the affairs of the Commercial National Bank of Dubuque aforesaid and with the intent then and there willfully, wrongfully, and unlawfully to deceive certain officers of the Commercial National Bank of Dubuque aforesaid, the names of whom are to the grand jurors unknown, and with the intent then and there willfully, wrongfully, and unlawfully to deceive and defraud the Commercial National Bank of Dubuque aforesaid and divers other corporations, firms, and persons who were then doing or might thereafter do business with the Commercial National Bank of Dubuque aforesaid, the names of said corporations, firms, and persons being to the grand jurors unknown, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

* * * * * * *

30-47 And afterwards, to wit, on the 10th day of April, A. D. 1890, the same being the ninth day of the regular April, A. D. 1890, term of said court, the following proceedings were had and entered of record on page 71 of Minutes H of the records of said court, to wit:

UNITED STATES OF AMERICA *vs.* RUFUS E. GRAVES.	No. 3302. Indictment for Making False Entries in Reports to Comptroller.

Now, on this 10th day of April, A. D. 1890, this cause coming before the court upon the motion of M. D. O'Connell, Esq., U. S. attorney, for an order for the issuance of a bench warrant for the arrest of said defendant—

It is hereby ordered by the court that a bench warrant issue from the office of the clerk of this court, upon the direction of the U. S. attorney for the district, for the arrest and detention of said defendant in custody until the further order of this court, unless he give bail to be approved by the clerk of this court in the sum of five thousand dollars ($5,000).

* * * * * * *

47*a* "A."

And afterwards, on the 19th day of April, 1890, the defendant personally appeared in court, waived formality of arraignment, and pleaded "not guilty." He also filed bond for his appearance, with approved surety.

And afterwards, to wit, December 6th, 1892, it being the first day of the December term, 1892, the defendant moved the court and

asked that leave be granted him to withdraw his plea of not guilty and to file a motion to quash and a demurrer to the indictment, alleging that such leave had been suggested when the plea of not guilty was entered. The motion was accompanied with the motion to quash and the demurrer. The motion was overruled and the leave denied; "but the defendant, however, is expressly given the right to avail himself, during the introduction of evidence upon the trial of said cause and upon motion in arrest of judgment, should such motion be filed, of all the points raised by such demurrer and motion to quash."

And afterwards, on, to wit, December 7th, 1892, the cause came on regularly for trial, and a jury was duly empanelled and sworn. The taking of the evidence occupied December 7th, 8th, 9th, 10th, 12, 13th, 14th, 15th, and 16th. At the conclusion of the argument by counsel the court withdrew from the jury and dismissed counts 1, 3, and 6 from the jury. Thereupon the jury was instructed by court and retired in charge of the sworn bailiff to consider of their verdict.

47*b* And afterwards, to wit, on the 17th day of December, the jury returned into court their verdict as follows, viz:

"In United States District Court, Northern District of Iowa, Eastern Division.

UNITED STATES OF AMERICA
vs.
RUFUS E. GRAVES. } No. 3302. Verdict.

We, the jury, find the defendant guilty as charged in counts No. 4, 5, 7, 8, 9, 10 in the indictment.

WILLARD BUCKLER, *Foreman.*"

The jury were thereupon duly polled and discharged. Defendant's counsel thereupon gave notice that they would file a motion in arrest of judgment, and also a motion for a new trial.

On December 20th the motion in arrest was filed in words and figures as follows, to wit:

* * * * * * *

48 Now comes the defendant, Rufus E. Graves, by his counsel, and moves the court to arrest the judgment in this case on the following grounds and for the following reasons, to wit:

I.

Because of the insufficiency of the indictment in the following particulars, to wit:

1st. The first count of indictment does not state by whom the report to the comptroller was made or signed or verified, nor does it set out the report either in tenor nor in its purport nor in substance, nor does it state or show that it was signed, verified, or at-

tested, nor does it show that such report of said association was such as in that behalf was required by law to be made.

2nd. The first count in the indictment does not state the actual amount of any overdraft, nor does it state how much or approximately how much the amount stated in each or any case exceeded the true amount, nor does it gave the name- of persons, firms, or corporations whose accounts were overdrawn, nor listed to be such, or of any overdrafts.

* * * * * * *

4th. The first count of indictment does not state the amount of the liabilities of directors over and above the amount reported, nor approximately state amount or amounts, nor does it state the names of the directors who were liable, nor give a list of such liabilities nor any item thereof.

5th. The first count of the indictment does not state the amount of loans or discounts less than the amount reported in any case, nor does it state said amount or amounts approximately.

6th. That said first count of the indictment fails to show on its face that the amount of loans and discounts in said report was falsely stated to be $552,195.22, because said count nowhere states
49 that the loans and discounts were in fact less than the amount stated, but simply charges that the amount of promissory notes and bills of exchange which were then and there unpaid and the resources of said bank were less than said amount, and does not charge that there were not any other obligations which might be properly classed as loans and discounts owned and held by said bank, and therefore wholly fails to show or charge that the loans and discounts were falsely reported.

That the meaning or purport of the item of the report as to the account of loans and discounts is not correctly stated in said count of the indictment, and therefore said count is of double meaning and insufficient.

7th. The first count of the indictment in the charge that the liabilities of the directors *was* more than reported is shown upon the face of the indictment to include also the liabilities of corporations composed in part of such directors, whereas the report only states and includes the liabilities of directors as individuals and as members of firms, and therefore said count of the indictment does not negative or show the statement in the report to be false in respect to the liabilities of the directors, and said count is double and is a departure and is insufficient; that the meaning or purport of the item in said count of the report as to the liabilities of directors is not correctly stated in said count of the indictment.

* * * * * * *

10th. That said first count in said indictment is bad, insufficient, and defective also in stating that the intention of the defendant was to deceive certain officers of the bank unknown to the grand jury, when the names of such officers were known to the grand jury or might have been known by reasonable diligence or could readily and easily have been ascertained and stated by the grand jury.

50 11th. That said indictment does not state or show that the report in which it is claimed that the false entry or entries were made was a report made, signed, or verified by the defendant, nor that he made or caused the same to be made, nor that the false entries were made, nor that the false entries were made by him as president or director of the bank, nor that the alleged report wherein the alleged false entries were made was a completed report or was ever forwarded to the comptroller or received by him.

* * * * * * *

III.

Because the fourth count of the said indictment is insufficient, double, repugnant, and defective for the reasons and upon the same grounds and for the same causes stated in the 1st, 2nd, 10th, and 11th grounds of this motion as applied to the first count of the indictment herein set forth.

IV.

Because the fifth count of the said indictment is defective, double, repugnant, and insufficient for the same causes and reasons stated in the 1st, 4th, 7th, and 11th grounds of this motion as applied to the first count of the indictment as hereinbefore set forth, and for the further reason that the same offense and act is charged in the first count, whereby the charge in the fifth count becomes double and renders the count insufficient.

* * * * * * *

VI.

Because the 7th count of the indictment is bad, defective, double, repugnant, and insufficient for the reasons and upon the grounds stated in the 1st, 2nd, 10th, and 11th grounds of this motion as hereinbefore stated and applied to the first count of the indictment.

VII.

Because the 8th count of the indictment is bad, defective, double, repugnant, and insufficient for the reasons and upon the grounds stated in the 1st, 4th, 7th, 10th, and 11th grounds of this motion as applied to the first count of the indictment as hereinbefore stated and applied to the first count of the indictment.

VIII.

Because the 9th count of the indictment is bad, defective, double, repugnant, and insufficient for the reasons and causes stated in the 1st, 5th, 6th, 10th, and 11th grounds of this motion as applied to the first count of the indictment as hereinbefore stated, and for the further reason that the same offence and act is charged in the third count of the indictment.

51 IX.

Because the 10th count of the indictment is bad, defective, double, repugnant, and insufficient for the reasons and causes stated and set forth in the 1st, 5th, 6th, 10th, and 11th grounds of this motion as applied to the first count of the indictment as hereinbefore set forth, and also because it is the same offense charged in the 6th count of the indictment, whereby the charge is double and twice made in the indictment.

* * * * * * *

52–54 XIV.

Because the indictment and each and every count thereof is bad, defective, double, repugnant, and insufficient because the same does not state facts sufficient to constitute a crime, nor does said indictment or either count thereof show that an offense has been committed by the defendant, nor does said indictment nor any count thereof substantially conform to the requirements of law.

XV.

Because the defendant was put upon trial upon each of the 16 counts in the indictment; the 1st, 2nd, 3rd, 6th counts of said indictment contained severally two or more offenses embraced in the same count.

C. C. COLE,
POWERS, LACY & BROWN,
Attorneys for Defendant.

(Endorsed:) In district court United States, northern district of Iowa. United States *vs.* R. E. Graves. Motion in arrest of judgment. Filed December 20th, 1892. A. J. Van Duzee, clerk.

* * * * * * *

54*a* "B."

And afterwards, to wit, on the 20th day of December, 1892, the court overrul*l*ed said motion in arrest of judgment; to which ruling the defendant duly excepted.

And afterwards, to wit, on the 21st day of December, 1892, the court entered judgment as follows, to wit:

* * * * * * *

55 The prisoner, Rufus E. Graves, having been indicted and arraigned, and having been tried and convicted of the crime of unlawfully making false entries in the report to the Comptroller of Currency, and the cause coming up before the court in open session this 21st day of December, A. D. 1892, upon the motion of M. D. O'Connell, Esq., U. S. district attorney, for sentence upon the said Rufus E. Graves upon the verdict of guilty heretofore rendered by the jury in said cause, and the court having asked defendant if he had *o*ught to say why the sentence of the law should not

be pronounced, the defendant and the counsel for defendant having made their statements to the court, but the said Rufus E. Graves failing to show any legal cause why the sentence of the law should not be pronounced:

It is therefore considered and adjudged as the sentence of the law by the court pronounced that the said defendant, Rufus E. Graves, for the crime by him committed, be imprisoned in the Iowa State penetentiary at Anamosa, Iowa, for the term of five (5) years, and is further adjudged to pay the costs of this proceeding, amounting to the sum of seven hundred thirty-nine & $\frac{68}{100}$ dolls. ($739.68).

56 & 57 The Supreme Court United States of America.

RUFUS E. GRAVES, Plaintiff in Error,
vs.
UNITED STATES OF AMERICA, Defendant in Error.

Assignment of Errors.

Now comes Rufus E. Graves, plaintiff in error, by his attorneys, S. C. Cole and Powers & Lacy, and says that in the records and proceedings in the above-entitled matter there is manifest error, to which exceptions were duly taken at the time, in this, to wit:

1. That the matters charged in the indictment in this case against Rufus E. Graves do not constitute a crime by the common law or any statute of the United States.

* * * * * * *

58 & 59 The counsel for defense make no question as to ownership and possession by the bank so far as shown by witness Booth.

20. In sustaining objection by district attorney to question put to the witness E. P. Welles, on the cross-examination, as follows: "Did you receive some Rasmussen cable stock, $110,000? Was there not given to you, as receiver, as collateral for these notes you have testified to, $110,000 of Rasmussen cable stock substantially the same time the notes came into your hands?"

21. In sustaining objection by district attorney to the following questions to the witness E. P. Wells, put on cross-examination, to wit: "I inquire whether they came into your hands substantially at the same time the notes you have testified to came into your hands, or stock of the Iowa Iron Works Co.—common stock, $34,000; second preferred stock, $26,000; preferred stock, $2,500—and old M. C. Spring Improvement Co. bond, $5,000, as collateral to these notes which I have above mentioned or some of them."

* * * * * * *

60 41. The court erred in the following ruling, to wit, under direct examination of witness E. D. W. Holway:

Q. "Will you please examine these books and state whether you can find any record of the note No. 12662, purporting to be made by L. D. Randall."

Counsel for defense objects to these questions respecting note of L. D. Randall & Co., on the ground that it relates to "loans and discounts," and the same is not admissable, for that the tenor of the alleged false entry in the statement is given as loans and discounts, and the statement of the purport is given as promissory notes, bills of exchange, and other obligations and evidence of indebtedness; and, further, if the evidence is offered in respect to the charge as to the liability of director, that the tenor of the alleged false entry in the statement is liabilities of directors (firm and individual) as payors, while the indictment assigns the purport and states the purport thereof to be liabilities of directors (individual, firm, or as members of corporations).

The objection is overruled as to the note in question and all the other notes which have been permitted or may be permitted to be introduced, and the court holds that this objection may stand as a continued objection to all evidence introduced tending to show liabilities of directors as though entry specifically to each matter of evidence as offered.
objected to

* * * * * * *

43. In overruling the motion of the defendant entitled "Motion to withdraw from the jury certain questions and specifications in the indictment, except so far as the same relates to counts two, eleven, twelve, thirteen, fourteen, fifteen, and sixteen," and in overruling entirely the second motion relating to other counts and expressly refusing to sustain said motion in respect to striking out counts 9 and 10.

* * * * * * *

61 45. In sustaining objections of the district attorney to the following questions put to R. E. Graves as a witness for himself: "State whether or not the bank accepted the corporation (the L. D. Randall Co. Co.) as a prior debtor on that indebtedness, and so advised both the company and the corporation."

46. In sustaining objections by the district attorney to the following questions put to the defendant as a witness on direct examination, as follows: "State if you know the general practice by national banks in respect to treating and reporting loans which had been previously arranged for as loans and discounts, or as overdrafts when such loans were in excess of the funds in the bank, of the person drawing the checks."

* * * * * * *

48. In overruling the objection by defendant's counsel to cross-interrogatories put to R. E. Graves on the stand as a witness, as follows: "From the time these debts originated, from 20th Nov., 1885, until you severed your connection with the bank, Feb. 8th, 1888, two years three months, was there ever a dollar realized from the dividends to apply to the payment of the indebtedness?"

49. In sustaining objection by the district attorney to the question put on direct examination by defendant's counsel to the witness C. H. Harris, as follows: "Will you state to the jury, Mr.

Harris, whether the report as made to the Comptroller of the Currency of date at close of business May 13, 1887, showed the true condition of the bank as you understood it, or how otherwise?"

50. In sustaining objection of the district attorney to the following question on direct examination of the witness C. H. Harris, called for defendant, to wit: "Will you state, if you know, what has been the custom of the bank in which you have been employed in respect to reporting all overdrafts which were arranged for as loans and discounts? I limit your experience to the period anterior to the period of the finding of the indictment of this case."

51. In sustaining district attorney's objection to the question put to Mr. Harris on direct examination in substance as to the corporations with which Mr. Graves was connected, and which corporations were doing business with the bank.

52. In sustaining the objection by the district attorney to the witness Harris as to whether he saw published the notice in the Dubuque Herald of the dissolution of the firm of L. D. Randall & Co. and the formation of the corporation of the firm of L. D. Randall & Co. Co. and the assumption of the firm's liabilities by the corporation.

53. In sustaining the objection by district attorney to the offering by defendant's counsel in evidence of the copy of the notice published in the Dubuque Herald of the dissolution of the
62 firm of L. D. Randall & Co. and the formation of the new corporation of L. D. Randall & Co. Company and the assumption of the debts of the firm by said new corporation.

54. In overruling objections by defendant's counsel put by the district attorney to R. E. Graves, who was recalled for cross-examination respecting his custom as to making reports, and calling his attention to the printed copy of the report of the condition of the bank on the 24th day of April, 1884, and then asking said witness to "now look at individual balance book for that day and see if the overdrafts were not $149,000, as shown by the books of the bank."

55. In overruling objection by defendant to the question put by the district attorney to R. E. Graves on recall for cross-examination, as follows: "Take, for example, the overdraft of R. E. Graves that day (April 24, 1884), $25,733.25. Will you tell the jury if that was arranged for, and with whom?"

56. In overruling objections by defendant to question put by the district attorney to R. E. Graves on recall for cross-examination, as follows, to wit: "Will you turn to the item of overdrafts in Individual Balance — D for the 24th day of April, 1884?"

* * * * * * *

58. In sustaining objections made by the district attorney to a question put by the defendant's counsel to the witness C. H. Eighmey, now president and formerly director for many years in the First National Bank of Dubuque, and also while Mr. Graves was there as president, as follows: "I enquire whether you are acquainted with the manner with which the bank, the First National Bank of Dubuque, made its reports to the Comptroller of the Currency."

Counsel for defense stated that the answer to the question would prove that he knew the practice of said bank for 21 years prior to this date.

59. In sustaining the objection by the district attorney to the following question put by defendant's counsel to the witness C. H. Eighmey: "I will ask this witness to state what was the uniform practice of that bank in making its reports to the comptroller as to classifying the overdrafts into loans and discounts, so far as placing the overdrafts which were arranged for in the class of loans and discounts."

Counsel for defense stated that they expected to prove by this witness, in answer to this question, that it was the uniform practice of the First National Bank of Dubuque, Iowa, in making its reports to the comptroller of the condition of the bank and classing its overdrafts in such reports by placing these overdrafts which had been arranged for as loans and discounts, and only those not arranged for as overdrafts.

60. In sustaining objection by district attorney to the question put to the witness C. H. Eighmey, as follows: "I would like to ask this witness whether or not he is acquainted with general practices,
usage, and custom of the national banks in the State of Iowa
63 and in the neighboring States upon the subject of classifying
arranged for overdrafts in their reports to the comptroller as a part of loans and discounts up to 1888."

Counsel for defendant stated that they expected the witness, by the answer to such question, would prove that the practice, as before stated, which obtained in the First National Bank of Dubuque, Iowa, obtained in the State of Iowa and neighboring States.

61. In sustaining objection by the district attorney to the admitting in evidence the deposition of Lyman J. Gage, pres. First National Bank of Chicago.

62. In sustaining objection by district attorney to admitting the deposition of J. J. P. O'Dell, of the Union National Bank of Chicago.

63. In sustaining the objection made by district attorney to admitting the deposition of Chas. A. Folsom, a bank examiner of large experience of Chicago and elsewhere.

64. In sustaining objection of the district attorney to admitting in evidence the deposition — John R. Walsh, pres. of Chicago National bank.

65. In overruling the objections by defendant to the introduction in evidence by the district attorney of Exhibit U.

66. In overruling objection by defendant to the offering in evidence by the district attorney of Exhibit Q.

67. In overruling objection by defendant to the introduction in evidence by the district attorney of Exhibit O.

* * * * * * *

64–73 73. In overruling defendant's objection to the question put by the district attorney to C. H. Booth, as follows: "And tell me whether or not this is the contract of purchase under which you bought your stock in the Commercial National bank in May, 1886?"

74. In overruling defendant's objection to the introduction in evidence by the district attorney of Exhibit Y.

75. In overruling objections by defendant's counsel to the question put by the district attorney to the witness C. H. Booth, as follows: "Now, General, I wish to ask if you at any other meeting of the board at which you were present, where list of overdrafts was presented—did you ever see why or no of their being listed in two classes, one book loans and the other overdrafts?"

76. In allowing district attorney, against objection by the counsel for the defendant, to state to the jury, in course of his argument, as follows: "I want to say to you, gentlemen of the jury, that it is not Gen. Booth who is on trial. There is testimony before you showing that as long ago as May, 1887, Gen. Booth was robbed of $42,800 by the defendant in this case," and in refusing to withdraw said statement from the jury.

To the instructions or charge given by the court to the jury the defendant's counsel, for convenience of the supreme court and in abundant fairness to the court below, make the assignment of errors to said charge and to each paragraph thereof in succession, to each paragraph of which exceptions were duly taken, it being understood that each paragraph, as numbered, extends to the following paragraph number.

* * * * * * *

73*a* "C."

(The errors assigned from number 77 to 123, both inclusive, relate to the exceptions to the different paragraphs of the charge and specify grounds in said exceptions severally. These grounds are also contained in the record embodied in the bill of exceptions and will be found therein. The assignments of errors embracing said grounds are omitted here in order to avoid encumbering the record with twice printing the same matter. The exceptions relate to the several paragraphs of the charge from 1 to 55, inclusive, and also to the charge as an entirety.)

74 * * * * * * *

123*a*. In refusing to give instruction number 1 asked by the defendant; which instruction is as follows, to wit:

The defendant is charged with knowingly, willfully, and unlawfully making certain false entries in three reports of the Commercial National Bank of Dubuque, Iowa, to the Comptroller of the Currency, knowing such entries to be false and making them with the intention of deceiving certain officers of the bank or of deceiving an agent then or thereafter appointed under title 62 of the Revised Statutes of the United States to examine the affairs of said bank, and with the intent to deceive and defraud said bank and parties doing business therewith. There are, therefore, in each offence charged in the indictment two essential elements: first, that the defendant made a false entry, as claimed, and, second, that he made such entry with the purpose or intent of deceiving some of the parties mentioned, and in order to show any criminal act on the part

of the defendant the prosecution must establish beyond a reasonable doubt both of such essential elements.

124. The court erred in refusing to give to the jury instruction No. 2 asked by the defendant; which instruction is as follows, to wit:

However erroneous the defendant's judgment may have been in his classification of the resources or liabilities of the bank with reference to the alleged false entries, such mistakes or misjudgment would not constitute a criminal offence in the absence of any intent to deceive or defraud.

125. The court erred in refusing to give to the jury instruction No. 3 asked by the defendant; which instruction is as follows, to wit:

The word "false" as used in the law with reference to entries in the reports in question means willfully and intentionally false. A mere mistake in the amount or classification of an item growing out of accounts in book-keeping would not make a man guilty under the law.

126. The court erred in refusing to give to the jury instruction No. 4 asked by the defendant; which instruction is as follows, to wit:

What the law intends to punish is an intentional misstatement in the report in regard to the affairs of the bank. These reports must show the condition of the bank truthfully, but they need not agree with the books of the bank either in the statement of the assets or the names by which they are called.

75 127. The court erred in refusing to give to the jury instruction No. 5 asked by the defendant; which instruction is as follows, to wit:

What are carried on the books of the bank as "overdrafts" may be properly classified in the reports to the comptroller as "loans" if they are in fact loans, arranged for and understood as such—that is to say, in making such report to the comptroller the officer making same may distribute his overdraft account and put such as actually represent loans to the class of loans and discounts.

128. The court erred in refusing to give to the jury instruction No. 6 asked by the defendant; which instruction is as follows, to wit:

If you find that defendant erroneously entered overdrafts in the class of loans and discounts or erroneously made any of the other alleged false entries, such entries would not constitute criminal acts unless you are satisfied beyond a reasonable doubt that they were made with intent to deceive or defraud; a mere mistake in that respect is not a crime; and if you have a reasonable doubt as to whether such alleged false entries were made intentionally wrong or mistake you should give the defendant the benefit of such doubt and find it was a mistake.

129. The court erred in refusing to give to the jury instruction No. 7 asked by the defendant; which instruction is as follows, to wit:

The prosecution is bound to make out the offense as charged,

both as to the falsity of the entries and the intent with which they are made, beyond a reasonable doubt, and if the proof leaves a reasonable doubt in your mind either as to the falsity of the entries or as to the defendant's fraudulent or criminal intent in making them, he is entitled to a verdict of acquittal at your hands.

130. The court erred in refusing to give to the jury instruction No. 8 asked by the defendant; which instruction is as follows, to wit:

The offense in this case as defined by the statute is a making a false entry in a report to the comptroller with intent to deceive, to injure, to defraud the bank examiner, the officers of the bank, or persons, firms, or corporations dealing with the bank. The offense is not completed by showing a making of a false entry, but in addition to the falsity of the entry it is incumbent upon the Government to prove that the defendant acted with the intention as specified in the indictment, to wit, to deceive the bank examiner, officers of the bank, or its patrons. In the case of the offense consisting of the doing of a principal act, such as larceny or robbery or murder, the proof of the fact of the larceny or the robbery or the killing with a deadly weapon sufficiently establishes the unlawful intent required by the law, for that in such cases the accused is conclusively presumed to intend the natural and necessary consequences of his act; but in an offense like that with which the defendant here is charged, which is made up of both the act, which is not criminal, and the intent, it is necessary for the Government to make proof of the specific intent charged in the indictment, and without such proof of intent you cannot find the defendant guilty—that is to say, the Government must prove not only the false entry, but since that act is not a crime, no presumption of intent arises from the doing of it, but the intent must be established as being entertained by the defendant in connection with the making of the false entry, and without such proof, in addition to the false entry, it is your duty to acquit the defendant.

76 See 2 Wharton's Criminal Law, section *section* 1279; 3 Greenleaf on Evidence, section 13; United States *vs.* Allen, 47 Federal Reporter, 701.

131. The court erred in refusing to give to the jury instruction No. 9 asked by the defendant, which instruction is as follows, to wit:

In this case the Government offereed testimony tending to show that in connection with the reports made of the condition of the bank August 1st and October 5th, that there were four certain notes then held by the bank made by L. D. Randall & Co., of which firm L. D. Randall was a director, of the Commercial National Bank of Dubuque, and that such notes should have been included in the lists or amount of liability of directors, but on this subject the defendant has introduced testimony tending to show that before the making of either of said reports of August 1st and October 5th the firm of L. D. Randall & Co. had sold its property to the corporation known as L. D. Randall & Co. Co., and that such corporation as a part consideration for the property acquired from L. D. Randall &

Co. assumed to pay all the debts of L. D. Randall & Co., including the notes and overdraft due to the Commercial National Bank of Dubuque, and that said corporation did expressly in words assume to the bank officers the payment of said notes and overdraft. Now, if you shall believe from the evidence that L. D. Randall & Co. did sell its property to the corporation of L. D. Randall & Co. Co., and that said corporation did assume to the officers of the bank the payment of the notes held by the bank, together with the overdraft, then by such assumption the corporation of L. D. Randall & Co. Co. became as between it and the L. D. Randall & Co. the principal debtor to the bank, and L. D. Randall & Co. were sureties or guarantors to the bank for the payment of said notes and overdraft if the said corporation failed to pay; and if you shall believe from the evidence that the defendant at the time honestly believed from these facts that the obligation- did become thereby the obligations of the corporation and the relations of the L. D. Randall & Co. thereto was that of a endorser or guarantor, and, so believing, ommitted to include said notes and overdraft in the liabilities of directors in the reports of August 1st and October 5th, then you should find the defendant not guilty upon that item in each of these reports.

132. The court erred in refusing to give to the jury instruction No. 10 asked by the defendant; which instruction is as follows, to wit:

There have been introduced in evidence a note made by the Iowa City Gas Co., by its president, J. K. Graves, and draft by J. K. Graves upon American Coal Co., acceptance waived, and also another drawn upon the Western Union Fuel Co., being drawn by J. K. Graves, acceptance waived. It is claimed by the Government that these were each and every of them the personal liability of J. K. Graves, and testimony has been admitted tending to show that the Iowa City Gas Co.'s note was a note of that corporation, and also evidence tending to show that both the draft upon American Coal Co. and Western Union Fuel Co. had been accepted after they were drawn, and that said note and drafts were treated and considered by the board of directors and the officers of the bank as the obligation of the maker or drawee or as the obligations of the Iowa City Gas Co., American Coal Co., and Western Union Fuel Co.

Now, if you shall believe from the evidence that these drafts were accepted by the drawee before the making of the reports, with which they were connected, and that the defendant honestly believed
77–80 that they were obligations of the makers and drawees and for that reason did not include same in lists or amount of liabilities of directors in the reports with which he is charged as having made, then you cannot find the defendant guilty for not having included the same as among liabilities of directors.

133. The court erred in refusing to give to the jury instruction No. 11 asked by the defendant; which instruction is as follows, to wit:

If the notes and other assets were in the bank at the time *of* the report was made to the comptroller, as stated in the report, then it is not a false report. The officers of the bank are not required to

determine whether the notes or other evidences of debt of the bank are good, even if a large amount of such notes and other of such assets were worthless. It would not be a false report if the officers included them in their reports. The officers do not guarantee nor state to the comptroller as to whether the assets are good or bad, and it is of no importance as to whether they were or not if they were owned by the bank.

134. The court erred in overruling the defendant's motion in arrest of judgment and in overruling each and every paragraph thereof and in respect to each paragraph of said motion; which motion is as follows, to wit:

(This motion is not set forth in full here, because the material parts thereof have hereinbefore been inserted.)

* * * * * * *

81 135. The court erred in overruling motion of defendant for a new trial and in overruling each and every ground and paragraph of said motion, which is as follows, to wit:

82 United States District Court, Northern District of Iowa, Eastern Division.

UNITED STATES OF AMERICA, Plaintiff, vs. RUFUS E. GRAVES, Defendant. } Motion of the Defendant to Set Aside Verdict and Grant a New Trial.

The defendant, R. E. Graves, by his counsel, moves the court to set aside the verdict and grant a new trial to the defendant for the following reasons and causes, to wit:

I.

Because the court erred in putting defendant on trial on an indictment containing 16 counts, in 1, 2, 3, and 6 of which the defendant was charged with more than one offence in each count.

II.

The court erred in admitting evidence offered by the Government to which the defendant at the time objected and to the ruling thereon by the court, and defendant also at the time duly excepted.

III.

The court erred in excluding evidence offered by the defendant upon the objection made by the Government, and to which ruling of the court, excluding all such evidence, the defendant at the time duly excepted.

IV.

The court erred in refusing to give to the jury the instructions and each of them as asked by the defendant.

V.

The court erred in its instructions to the jury and giving upon its own motion, and the particular parts whereof are set forth in the assignment of errors filed herein.

VI.

The verdict is contrary to the evidence.

VII.

The verdict is contrary to law.

C. C. COLE &
POWERS & LACY,
Att'ys for Defendant.

All which errors are hereby duly assigned by Rufus E. Graves, plaintiff in error, by his attorneys.

A reversal of the judgment is asked.

C. C. COLE.
POWERS & LACY.

(Endorsed:) Filed December 21st, 1892. A. J. Van Duzee, clerk.

83 And afterwards, to wit, on the said 21st day of December, A. D. 1892, there *was* filed in the office of the clerk of the said court in said cause a writ of error, assignment of errors, supersedeas bond, and citation; which writ of error and citation are herewith returned, and said assignment of errors and bond are in the words and figures following, to wit:

Know all men by these presents that we, Rufus E. Graves, as principal; Joseph A. Rhomberg, Phineas W. Crawford, and William H. Utt, as sureties, are held and firmly bound unto the United States of America in the full and just sum of ten thousand dollars ($10,000), to be paid to the said The United States of America; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seal and dated this twenty-first day of December, in the year of our Lord one thousand eight hundred and ninety-two.

Whereas lately, at the December term, A. D. 1892, of the district court of the United States for the eastern division of the northern judicial district of Iowa, in a cause depending in said court between The United States of America, plaintiff, and Rufus E. Graves, defendant, sentence and judgment was rendered against the said Rufus E. Graves—

That the said Rufus E. Graves, for the crime by him committed, be imprisoned in the penetentiary at Anamosa, Iowa, for the term of five (5) years;

And the said Rufus E. Graves has obtained a writ of error of said

court to reverse the said sentence and judgment in the aforesaid cause, and a citation directed to the United States of America, citing and admonishing it to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the date of said citation:

Now, the condition of the above obligation is such that if the said Rufus E. Graves shall prosecute said writ of error to effect and abide all the decisions, orders, and judgments hereafter made in the said Supreme Court and in the said district court if said Rufus E. Graves fails to make good and sustain his said writ of error and plea, then the above obligation to be void; else to remain in full force and virtue.

RUFUS E. GRAVES. [SEAL.]
JOSEPH A. RHOMBERG. [SEAL.]
PHINEAS W. CRAWFORD. [SEAL.]
WM. H. UTT. [SEAL.]
N. E. UTT. [SEAL.]

NORTHERN DISTRICT OF IOWA, *ss:*

I, Joseph A. Rhomberg, surety to the above bond, being first duly sworn, says for himself that he is a freeholder in the State of Iowa and is worth the sum of thirty thousand dollar- in property not exempt from execution over and above all debts and liabilities.

J. A. RHOMBERG.

Subscribed and sworn to before me by said Joseph A. [SEAL.] Rhomberg this 21st day of Dec., A. D. 1892, at Dubuque, in said district.

A. J. VAN DUZEE,
Clerk U. S. District Court.

84 In District Court of the United States in and for the Northern District of Iowa, Eastern Division.

UNITED STATES OF AMERICA
vs.
RUFUS E. GRAVES.

Indictment for making false entries in reports to the Comptroller of the Currency.

Be it remembered that on this seventh day of December, 1892, this cause came on for trial, on the indictment, before Hon. J. S. Woolson, district judge, and a jury duly examined and sworn, the United States of America being represented by the following counsel, Hon. M. D. O'Connell, district attorney, and Hon. Wm. Graham, and the defendant being represented by Hon. C. C Cole and Hon. J. B. Powers. The following proceedings, among others, were had and the following, among and with other, testimony given and offered, and objections thereto made, and rulings of the court thereon had, and exceptions thereto taken as follows:

The indictment was read to the jury by Hon. Wm. Graham, and the case stated in behalf of the Government by the Hon. M. D. O'Connell, and for the defendant by Hon. C. C. Cole.

Counsel for the Government offered proof, which was not objected to, of the organization of the Commercial National Bank of Dubuque, Iowa, and of its authorization to do business.

Counsel for Government offered in evidence original oath of R. E. Graves as director of said bank, dated January, 1887.

85–100 Counsel for Government offered in evidence the original report of the condition of the bank made on the 13th day of May, 1887. (Copy of said report is hereto attached, marked Exhibit A.)

Defendant, by his counsel, objects to the introduction of the report on the ground that it is irrelevant, incompetent, and immaterial; that the same was not before the grand jury; that no notice of its introduction has been given to defendant or his counsel, or of the purpose to introduce it; that the same is not set out in the indictment, nor is it fully described therein; that the purport of said paper is not set out in the indictment; that the indictment does not state by whom the report was verified or attested or that any such verified or attested report was made or furnished to the Comptroller of the Currency, or other matter sufficient to entitle it to be introduced in evidence, and that the indictment does not state that the report was made by the defendant, nor by whom it was made.

The objection that the report was not before the grand jury and that the defendant or his counsel had not notice of its introduction by the Government was overruled by the court; to which ruling the defendant excepted.

The objection that the report was not set out in full in the indictment was overruled by the court; to which ruling the defendant excepted.

The objection that the indictment does not state that the report was verified or attested and that such report was not made to the Comptroller of the Currency was overruled by the court; to which ruling the defendant excepted.

* * * * * * *

100*a* "D."

The Government then introduced as a witness C. H. Booth, who proved that each of the reports to the comptroller, to wit, the one of May 13, 1887, the one of August 1, 1887, and the one of October 5th, 1887, were, in all the manuscript therein, in the handwriting of the defendant, R. E. Graves, who was during all of the time president, and the other persons signing said reports were directors, and C. H. Harris was cashier of the Commercial National Bank of Dubuque.

The Government, by its counsel, then renewed the offer successively of each of said reports; to which defendant, by his counsel, interposed the same objections as before; which objections were

severally overruled, and the defendant at the time duly excepted to each ruling.

On further examination the said witness, C. H. BOOTH, proved that the note dated December 15, 1881, for four thousand dollars, signed by R. E. Graves; that the note of date July 1st, 1881, for five thousand one hundred and seven dollars and five cents, signed by R. E. Graves; one note of date April 1, 1887, signed by the Iowa City Gas Light Co., by J. K. Graves, president, and payable to J. K. Graves and indorsed by him for the sum of $5,566.47, were each the property of the Commercial National bank from their respective dates down to the closing of said bank and were during that time in the possession of that bank.

100*b* Said notes are marked in the order stated as Exhibits K, L, and E.

The witness C. H. BOOTH, on cross-examination by defendant's counsel, was asked, on being showing note marked Exhibit J, as follows:

Q. State what, if any, security was attached to that note at the time it was made. I now hand you the note so that you may refer to the memorandum upon it.

Counsel for the Government object as immaterial and not cross-examination. Objection sustained. Defendant excepts.

(On cross-examination of witness C. H. BOOTH, note marked Exhibits S being shown him:)

Q. I will ask you, General Booth, to explain, if you can, what is meant by the memorandum or indorsement on the face of that note of R. E. Graves for $5,000, dated July 9, 1887, which memorandum is as follows: "Life insurance, $10,000, No. 214,399, Mutual Life Insurance Company of New York."

Objected to by the Government as entirely immaterial, no occasion to enquire into that; it doesn't affect the question of liability to the bank what collaterals may have been put up or what indorsers may have signed. Objection sustained. Defendant excepts.

100*c* "Counsel for defendant admit the genuineness of the handwriting and signature, and that the handwriting in the body of the reports as to May 13, 1887, August 1, 1887, and October 5, 1887, is that of defendant, R. E. Graves."

On cross-examination General BOOTH, recalled, testified that he purchased — large amount of stock in the bank on the 11 of May, 1886; that a list of the assets of the bank were furnished him, which he handed to the reporter, and it was marked Exhibit C. It was quite likely after that time that I was an attesting director to reports made by bank. I was elected vice-president shortly after I made my purchase and was elected director. It was under-

stood that I should not be required to perform the duties of vice-president; that Mr. Waller would discharge my duties pertaining to that position. I resigned my position of vice-president July 11, 1887. I remember that R. E. Graves was absent at quite a number of meetings of the board of directors in 1887. It may have been from June 19 to November 28 of that year. I do not recollect the time precisely, but I can state pretty distinctly that he was absent quite a number of meetings

* * * * * * *

101 Q. You said, I believe, that you remembered of Mr. Powers coming to you with a copy of the original draft of the report for the first day of August, 1887?

A. Yes; I said that in my examination.

Q. Now I enquire whether or not at that time your attention was called to the different items of overdrafts, and whether or not you stated to Mr. Powers that you remembered that certain of the items were arranged for.

A. Yes, sir; I think I stated to Mr. Powers that I was aware of the fact, as a director, that some two or three accounts that I knew to be overdrafts. I stated that as coming to my knowledge in the board, not coming to my knowledge at the time I checked the statement.

102 Q. Did you also tell him that you knew they were arranged for?

A. Yes, sir; I think I did state to Mr. Powers that I knew of certainly two of the accounts that were arranged for, because I knew that the president had stated before the board that fact that one certain account had been arranged for and an amount permitted to be overdrawn, and the other one, I don't know that I said it had been arranged for, but I said it was all right; that I knew it was all right, and that the money was in the bank for ten times the amount.

Q. You spoke of two?

A. I speak of one as being told by the president. I can name the account, if desired.

Q. Well, do so.

A. Ham & Carver were permitted to overdraw their account.

Q. Do you say that you didn't state to Mr. Powers at that time that there were others of the overdrafts arranged for?

A. Yes, sir; I think I stated to him that the account entitled "Right of way" was overdrawn something over $1,000.

Q. What do you say about Randall's account?

Ans. Who?

Q. Randall—L. D. Randall & Company.

A. If that firm was permitted to overdraw I now have no recollection of it.

Q. I ask you what you said to Mr. Powers on the occasion.

A. My recollection is not distinct; there was considerable talk about the overdrafts.

Q. My general question is, Did you not say to Mr. Powers that

you knew of several items of the overdrafts being arranged for?

103 A. No; I said that I knew there were two or three that I knew were arranged for. Mr. Powers took out his pencil and marked a star at the items.

Q. You said three?

A. No; I said two.

Q. Did you not say to Mr. Powers that you knew L. D. Randall & Company had an overdraft that was arranged for and had been mentioned in the board?

A. I don't remember saying anything of that kind; I might have said that L. D. Randall, being a director, had it understood that he would arrange for the overdraft.

Q. You don't remember of any other particular ones you referred to and told Mr. Powers had been arranged for?

A. I have forgotten whether Farley & Loetcher Company were in that account.

Q. But did you know that these you have mentioned had been arranged for?

A. It had been told me and I remembered it—told me by the president.

Q. Had the subject been brought up before the board?

A. The subject of overdrafts?

Q. Of arrangement by these parties for the overdrafts.

A. I don't know whether it had or not, but the subject had been mentioned to me, I know, and I made no objection to it. I will say that frankly.

Q. I want to ask you what was known as the investment account.

A. If you will present me the statement which you had marked this morning by the reporter I will read to you what accounts were included in what was known as the investment account.

Q. State to what items did the contract which you identified as being signed by J. K. Graves refer, and what were they called.

104 A. It seems to call for a schedule, which I don't see attached to it, and I presume this statement is an inventory of the several securities that were deposited with it.

Q. Please read, if thereby your recollection is refreshed.

A. Under head of investment account in this paper I read, J. K. Graves' obligations to repurchase same on January 1, 1887, for $30,098.42, interest eight per cent.; sixty bonds ($60,000) Iowa Iron Works Company, 10 years, 6 per cent., guarranteed by J. K. Graves, the two items together amounting to $90,098.42. A description of the securities seems to follow: Iowa Iron Works Company, second preferred stock, $16,000; ditto, preferred stock, $2,500; P. C. stock, $2,500; Capital Insurance Company Des Moines stock, $2,000; Oskaloosa P. & L. Co. stock, $7,500.00; C. & G. Manufacturing Co., $10,000 (common stock); preferred do., $10,000; C. S. H. Co.'s stock, $23,000; Gladstone Refining Co. bonds, $3,000; Old M. C. Springs Improvement Co. bonds, $1,500.00; American Coal

Company bonds, $5,000; Old M. C. Spring Improvement Co. stock, $7,200, the footing of which as it is put down here is $87,700.

Q. Were these items continued to be recognized by the board as the investment account, subject to the changes afterwards made?

A. I find these items under what is termed investment account.

Q. I ask you whether, subsequently, they were spoken of and recognized by the board under that name.

A. They were recognized as collaterals held by the bank under what account I ain't able to say now.

Q. For the purpose of refreshing your recollection, General, I call your attention to the report which was made to the board August 11th by you and Mr. Waller, and see whether or not they were then so known and recognized.

A. It was so called here. I think my recollection will serve me to state that about one-half of that account was paid—one-half the amount was realized from the different securities which were
105 deposited. That is my recollection. The books will show.

Q. Is it not your recollection that that account was changed from time to time? Some of the securities were sold and others were afterwards added, so that it was sometimes more than at others?

A. I can state what I know to be a fact, that some of the items were paid. Whether there was an additional amount substituted for those enumerated, I am unable to say.

Q. I now show you a paper, General Booth, which has been marked by the reporter Exhibit D and ask you to state in whose handwriting that is.

A. I think that is my penciling and handwriting.

Q. I will ask you, General Booth, to explain what that exhibit is, to what it refers.

A. This paper contains some figures in the shape of statements which I made to Mr. R. E. Graves with a view of settling or arranging what was at the time I made it an unsettled account of the affairs of the Dubuque & Dakota Railroad Company, connected with the firm of Platt, Smith & Co., and also the affairs of the Iowa Pacific Railroad Company—three companies—with a view of arriving at a settlement so far as I thought there might be an amount due to me in connection with it. It was made to R. E. Graves for the purpose of showing him what was the amount that I might reasonably claim in the final settlement of it for the part I had taken in the management of these three companies so as to secure a large amount placed in the bank in the name of H. L. Stout, special account, and this had reference particularly to the remainder of that account, which at that time was supposed to be all profits, but it was never settled, never came to a final settlement, and remained as a credit to the account of H. L. Stout, special account, on the books of the bank until the suspension of the bank.

106 Q. Now, I wanted to ask you there, General, this question: Whether there was an understanding and agreement with Mr. R. E. Graves that his interest in that account was to remain as security for his overdrafts and indebtedness to the bank?

A. I think he told me once that he had told General Stone that

any interest he had in that account should remain as a security for his overdraft. Mr. Stone is present; he can say.

Q. My question relates as to whether it was so understood by the board of directors or the officers of the bank.

A. I don't know that any other members of the board knew much about the account except myself.

Q. Did you have any understanding in that respect?

A. No, sir. When that account comes to be adjusted I will have something further to say on that subject, which I don't think has any application to the case before the court.

Q. General Booth, I want to ask whether the loans that were made after you came into the bank were made with the approval of Mr. Waller and yourself, as executive committee.

Objected to as immaterial and not cross-examination. Objection overruled.

A. I cannot now designate any loans that were made of money but what were approved by Mr. Waller and myself or by either Mr. Waller or myself. It was a distinct understanding between Mr. Waller and myself that none of the old loans should be increased, and that no assest or money of the bank should be used to increase these accounts or loans. Loans to new parties were on a different footing. We had, I may state, if I am permitted to do so, quite a large number of very excellent houses who did business with the Commercial National bank. These houses were known to be responsible to all the members of the board, and when they applied for accom-odations they were usually granted, even if we were short for cash and were obliged to rediscount paper for the pur-
107 pose of accom-odating them That was done after I came into the bank and continued to be done until the time of its suspension, and, in fact, at the time of its suspension we had quite a number of rediscounted papers. The receiver is here; he can testify to that. As to the control, I have heard a good deal said, and at the time the control of the bank passed into our hands, as to this and as to the responsibility assumed by those in control, I want to say something on that subject. If anything I say is improper, it may be stricken out and not given to the jury. The questions that have been asked have brought the subject to my attention in reference to when the control passed, and that I hadn't purchased the stock without naming a controlling number of the directors. I want to state what control.

(Interrupted by the court, who says to the witness: If your former answers are not deemed full enough by you on that point you may now state it. Make your explanation as brief as you can.)

While it is true that the control of the bank was in the hands of four individuals, who owned a majority of the stock, which practically gives the power to control the bank, if the power is used, it was understood that the control extended only to what I have already stated to be advances of money that was to go out of the bank in future. There was no designation on my part when I

came into the bank or understanding with the officers of the bank as to the management of the routine; that was left with the president, and there was no control in that respect exercised during the whole time Mr. Graves remained there; I had entire confidence in the knowledge and ability of the officers of the bank and in the fidelity of the clerks of the bank, so that there was no control of the affairs of the bank at all, and the power of control was confined wholly to the loaning of money to the parties to whom it
108 should be loaned. And now, further, in reference to the answers I have made here in reference to these statements. I had such full faith and confidence in the ability and knowledge of the president and cashier of the bank that when these statements were presented to me with their figures upon them I was convinced they were correct, and the matter of my checking was more a matter of formality than it was to ascertain if there were any errors in them, and what I saw sworn to by one of the officers of the bank I had no hesitation in signing my name as a director to attest it.

Q. Now, I want to inquire, General Booth, whether the executive committee, yourself and Mr. Waller approved every loan after you became connected with the bank before the same was made?

A. We didn't call a meeting of the board when a man proposed to discount a note of $1,000 or $5,000.

Q. Didn't Mr. Harris, the cashier, go to Mr. Waller and you with each note for your approval?

A. He might have gone to Mr. Waller. I think Mr. Harris will say that he didn't come to me very frequently.

Q. Did not you understand that it was the custom of Mr. Harris, when an application for a loan was made, to go to Mr. Waller or yourself and get your consent before the note was discounted?

A. I think that was the case.

Q. After they were discounted were they not reported to the board at each meeting?

A. I think so, both new loans and renewed loans, but the new loans were reported as such and the old loans as renewals, and were approved of as such, and I will take occasion to say here that as to the question of liability of directors in excess of the legal amount of 10 % the president and I differed at the time.

Q. That was whether the directors were responsible for loaning in excess of 10 %, you thought it didn't make them liable
109 and the president thought it did?

A. Yes, sir.

Q. I think you said that these new loans and renewals were, each and every of them, reported to the board and approved by the board?

A. That is my recollection. I think the record will show that.

Q. Now, there were committees appointed from time to time to look over the assets of the bank and to count the cash and the notes?

A. I think there was. The record will show it.

Q. Were you on any of these committees?

A. I think I served on one or two occasions as a committeeman.

Q. As such committee, yourself and the others, when acting, looked over all the assets, every note, and understood it and approved the condition, did you not?

A. We looked over what we supposed to be all the notes, but the fact of our looking over them didn't amount to an approval of them.

Q. You have said there were no changes of these securities except with the approval of the committee and of the board. Now, then, when you had this committee appointed—these committe-s appointed—and they examined you found everything just as it had been reported?

A. I don't remember differences of that kind; I don't remember now of any.

Q. This committee had each time to examine the overdrafts as among the assets?

A. Well, I don't think I examined the overdrafts. I think Mr. Waller had a report from the cashier of the overdrafts which were reported from time to time before the board in session; that is my recollection now.

(On redirect examination of witness C. H. Booth:)

110 Q. Will you look at this paper which I now show you, dated July 1st, 1887, and signed J. D. Abrahams, deputy and acting Comptroller of the Currency, addressed to the directors of the Commercial National Bank of Dubuque, Iowa, and state whether or not you received that letter in the bank?

Objected to by defendant's counsel as irrelevant, immaterial, and incompetent and also not proper redirect examination. Objection overruled. Defendant excepts.

* * * * * * *

110*a* "E."

W. P. COUCH was called by the Government as witness and handed the general balance book of the bank to read therefrom, and was asked questions as to what it showed on certain days, as follows:

Q. Do you see any pencilings along in the general balance book of that date?

Counsel for defendant object to any testimony being offered regarding loans and discounts, because of the tenor of the term "loans and discounts" in the indictment. Our contention is that the tenor of the term does not limit it to notes and bills of exchange, but that it extends to and embraces money advanced upon collaterals.

The court announced that, so far as the objection at this stage was concerned, it was overruled, and defendant excepts.

The counsel for the Government called E. P. WELLS, who testified that he was appointed receiver of the Commercial National Bank of Dubuque about April 1, 1888, and that their came into his possession at or about that time the several notes heretofore offered in evidence — exhibits, and also certain letters signed by J. D. Abrahams, deputy and acting comptroller, date- July 1, 1887; also one note therein, date- May 13, 1887, of $9,000, signed by J. K. Graves and marked Exhibit R. These papers, thus identified, were offered in evidence. Thereupon—

Counsel for defense move to strike from the record and to withdraw from the consideration of the jury the testimony of E. P. Wells respecting the fact that these notes which were identified came into his hands as receiver, on the ground that it is immaterial. What became of the notes, whether they went to the receiver and were then paid or whether they were paid before they went into the hands of the receiver, is immaterial, so far as the prosecution
110*b* is concerned, and the testimony as to what became of these notes cannot be material. Counsel for defense make no question in respect to the ownership and possession by the bank, so far as shown by the witness, General Booth.

Motion overruled, and defendant excepts.

On cross-examination of the witness E. P. Wells he was asked:

Q. Did you not receive some Rasmussen cable stock, $110,000? Was there not given to you as receiver, as collateral for these notes that you have testified about, $110,000 of Rasmussen cable stock at substantially the same time the notes came into your hands?

Objected to by the counsel *by* the Government as not proper cross-examination on matter inquired into by the Government, immaterial, and incompetent. Sustained. Defendant excepts.

Q. I enquire whether there came into your hands, substantially at the same time the notes you have testified to came into your hands, the stock of the Iowa Iron Works Company—common stock, $34,000; second preferred stock, $26,000, and preferred stock, $2,500; of the Iowa Iron Works Company and Old M. C. Spring Improvement Company bonds, $5,000, as collateral to these notes which I have above mentioned, or some of them?

Objected to by counsel for Government as not proper cross-examination. Objection sustained, and defendant excepts.

Counsel for the Government then offered in evidence all of the notes which had been identified and marked as exhibits in the case; also offered in evidence General Balance Book F, under date
110*c* May 14, 1887; also showing loans and discounts to be $456,546.48, also from same book, under date August 2, 1887, showing loans and discounts $490,133.78; also same book, under date of October 6, 1887, showing loans and discounts to be $468,041.50; also Discount Record, page 286, showing entry of note No. 12577, copy attached, as Exhibit I. Counsel for Government then offered in evidence and read to the jury numerous questions

and answers from the deposition of R. E. Graves, taken in the case of E. P. Wells, receiver, against The Iowa City Gas Light Co. and J. K. Graves.

The Government then introduced E. W. D. HOLWAY, a witness, and put to him the following question, to wit:

Q. Will you please examine these books and state whether you can find any record of a note, No. 12662, purporting to be made by L. D. Randall?

Counsel for defendant object to this question respecting note of L. D. Randall on the ground that it relates to loans and discounts and the same is not admissible, for that the tenor of the alleged false entry in the statement is given as loans and discounts and the statement of the purport is given as promissory notes, bills of exchange, and other obligations and evidences of indebtedness, and, further, if the evidence is offered in respect to the charge as to the liability of directors that the tenor of the alleged false entry in the statement is liability of directors (firm and individual) as payers, while the indictment assigns the purport and states the purport thereof as being the liability of directors—individual, firm, and as members of corporations.

The COURT: The objection is overruled as to the note in question and the other notes which have been permitted or which
110*d* may be permitted to be introduced, and the court holds that this objection may stand as a continued objection to all evidence introduced tending to show the liability of directors as though entered specifically to each matter of evidence as offered. Defendant excepts.

The Government also offered other material evidence not set out herein and rested.

Defendant's counsel read in evidence certain pages of the minutes of the board of directors of the Commercial National Bank of Dubuque.

Defendant's counsel then called R. E. GRAVES, the defendant, as a witness, who testified that he was president of the Commercial National Bank of Dubuque from its organization in 1871 until February 22, 1888. General C. H. Booth became connected with the bank about the 1st of June, 1886. Mr. F. E. Stout and Mr. Andrew became connected with the bank the same time and were each made directors. Mr. Waller resumed his position as director at the same time.

Q. Did Mr. Booth or Mr. Stout or any of Mr. Booth's associates coming in at that time put in any money for the purpose of providing for or purchasing the loans that had been made?

Objected — by counsel for the Government as immaterial and incompetent. Objection sustained, and defendant excepts.

I made the several reports to the comptroller offered in evi-
110*e* dence. All of the written parts is in my handwriting and the*ir* were pencil figures made thereon by me. Certain

overdrafts were classified and were put in the reports as loans and discounts, because the different persons making such overdrafts had spoken to the managers of the bank and obtained permission to make the same. Those overdrafts which have not been arranged for were reported as overdrafts. Those that were included in loans and discounts were accounts that had been arranged for and permission asked to overdraw. In other accounts treated as overdrafts were those where the person drew his check in advance without asking permission, and when this was done it was treated as an overdraft. Where they asked permission to overdraw and such permission was granted it was classified as a loan. The overdraft made upon permission of the bank was treated as a loan. The reports severally contained the overdrafts treated as a part of the loans and discounts, while the others were classed in the reports as overdrafts. (The witness names the persons whose accounts were included in the loans and discounts and each of whom had permission and had arranged for the overdraft; also the names and amounts of those whose accounts were overdrawn.)

All these matters were brought before the board in detail. Explanations of the permission to overdraw were made to the board at their meetings. Each and all those accounts included in the loans and discounts had permission to overdraw & had arranged therefor. A classified list of overdrafts, showing the book loans and overdrafts proper, were laid before the directors at each of their meetings. A loan in the form of an overdrawn account was classified as book loan and the others as overdrafts. They were presented to the directors in two lists. One was headed as book
110*f* loans and the other as overdrafts, and in this way they were presented to the board of directors at each of their meetings. The persons having book loans were granted them for different reasons. The book loans were made to parties who had been to the bank and made arrangements to overdraw. The overdrafts were where checks were presented and paid without any arrangement or authority for the drawers to overdraw their accounts. Where an account had been overdrawn at first without permission and parties thereafter made arrangements for its continuance for a few days, it was classed under the heading book loans.

The investment account was included in the loans and discounts. That account, made on May 13, 1887, was $60,000 of mortgage bonds guaranteed by J. K. Graves, a lot of stocks and bonds taken for $30,098.42, for which we had the guaranty of J. K. Graves. That was less the amounts that had been collected from securities, which, deducted from the total, left the investment account at $75,449.82.

That account originated in this way, to wit: The bank held $60,000 of Iowa Iron Work Co. paper with J. K. Graves' indorsement, and we took the mortgage bonds in place of that paper, regarding the mortgage as better security. Exhibit F is the contract under which the contract was originally made.

Q. In the course of your examination you have used the term "suspended loans." Will you explain to the jury what you mean

by that term? What were the facts by which that term came upon your books?

A. They were loans that the parties had failed. I remember William Stolteben and A. R. Knights & Co. are among them. There were quite a number of notes there that were past due for a long time. We expected to lose it all. At that time, however, we hoped we might get something out of them, and so we charged it up as suspended loans, preparatory to carrying it into profit and loss and charged off.

Looking at the report of August 5th as to the condition of the bank on August 1st, the overdrafts are stated at $2,948.58. There were overdrafts classified as book loans at that time. Such overdrafts classified as loans were as follows: R. E. Graves, $6,983.21; J. K. Graves, $7,571.50; Ham and Carver, $1,375.42; L. D. Randall Co., $2,503.64; J. S. Randall, $2,031.23, making a
110g total of $20,465. The item of $6,983.21 to R. E. Graves, included in the loans and discounts of the report August 5th, 1887, was embraced in the overdrafts in the report of May 13, 1887.

Q. Will you tell the jury why it is now in the book loans in the report of August 1st when it was in the other classification on May 13th?

A. I had arranged it with Mr. Waller. I had talked with him about it, and it was so reported to the board by him.

Q. Was that fact reported to the board?

A. Yes, sir; it was talked of in an informal way.

Q. State what was the practice in respect of reporting these book loans to the board of directors.

A. The matter was generally talked of in an informal way, and the talks had with those wishing to so overdraw were given to the board.

In looking over the list of overdrafts in the August 5th report I find that there is one account—that of the Dubuque Oatmeal Co.—included in overdrafts which should have been reported as loan. These overdrafts were at that time classed by the board of directors as loans—I mean at the meeting of the board nearest the date on which the statement was called for.

Q. What was the practice after Mr. Booth came into the bank in respect of overdrafts and were they ever made except as arranged for?

A. They were submitted to Mr. Waller. Mr. Waller was practically the manager of the bank. For instance, if Mr. J. K. Graves wanted a renewal, I hadn't anything to say about it. I always referred him to Mr. Waller or Mr. Booth.

The aggregate of loans and discounts in the report of the condition of August 1st was $551,048.60. It was ascertained in the same manner as in the previous report of May 14 as follows:

Loans and discounts, 490,133.78; the investment account, 75,449.82; suspended loans, 10,000; overdrafts arranged for and classified as loans, 20,465; making an aggregate of $596,048.60, from which we deducted the contingent fund of $45,000, leaving 551,048.60, as reported.

The contingent fund was a fund contributed by several of the stockholders on July 12, 1887, to retire objectionable assets at the time. C. H. Booth contributed $15,000, I gave $5,000, J. K. Graves $5,000, William Andrew $2,666.65, A. Treadway $2,333.35;
110*h* Frank D. Stout contributed $5,00- in cash, making $45,000. Those who made the contributions by notes to the bank did not draw any money from the bank thereon. The objectionable paper to be retired by these contributions had not been selected, but were included in the general assets, and for that reason the forty-five thousand dollars was deducted from the aggregate. The attention of the directors was called by myself frequently to the matter.

The investment account in the report of August 5 was the same as that of May 15. The directors' liabilities were estimated. They were ordinarily ascertained from the pieces of paper that we had. In this instance it is just an even sum, which leads me to believe that the amount was estimated. I did not put the liability of J. K. Graves as connected with the investment account as a director's liability, because he was not liable as a principal, nor did I report the draft of the American Coal Co., the Western Union Fuel Co., nor the Iowa City Gas Light Co., upon which he was drawer, among the liability of the directors, because his liability was not as principal. At that time the note of L. D. Randall and Co. had been negotiated to and was the property of the Winchester bank. It had been transferred without indorsement, so that our bank had no liability on it. The other notes of L. D. Randall and Co., I cannot state positively as to how they were reported. They should not have been reported as directors' liability, because the L. D. Randall & Co. Company had acquired all the assets of the firm, and the bank had been notified of this and of the assumption of the liabilities of the firm by the corporation, and had accepted that notice. The party primarily liable was L. D. Randal- & Co. Company.

Q. What notice had the bank of the transfer of the property of L. D. Randall & Co. to the L. D. Randall & Co. Company?

A. The cashier and myself had had verbal or written notice from Mr. L. D. Randall, and our attention had also been called to the articles of incorporation and to the advertised notice of the dissolution of the firm, and that it was succeeded by the corporation which took all the assets and assumed all the liabilities.

110*i* The bank accepted the corporation as its debtor upon that indebtedness, and so advised both the company and the corporation. At the maturity of those notes the corporation did take them up. The contingent fund was in the same condition, except that some of the notes had been paid. The general balance book for August 1, 1887, shows loans and discounts account 490,133.78; investment account, $75,449.82; suspended loans account, $10,000. There is to be added to these those overdrafts classed as loans, 20,465, of which I have just spoken, thus making an aggregate of $596,046 60, less the contingent fund, which didn't belong there, leaving, as reported to the comptroller, $551,048.60.

I have in my hand the original report to the comptroller of date October 5, 1887. It was done by me. The classifications of the

loans is in Mr. Harris' handwriting, and the balance in mine. The report shows loans and discounts $491,592.85. It is made up as follows:

Loans and discounts account, 468,041.50; investment account, 36,449.82; suspended loans account, $10,000; overdrafts classified as loans, 22,101.53. These sums aggregate $536,592.85. From this we deduct the contingent fund of $45,000, leaving the balance as reported, $491,592.85. The investment account remained the same as in the last report, except that the amount had been reduced, but I cannot state how much. The report shows the overdrafts to be $5,344.60. The following is a list of the overdrafts classified as loans, all of which had been arranged for and reported to the board as follows:

110*j* Farley & Loetcher Mfg. Co., 4,698.80; R. E. Graves, $7,072.96; J. K. Graves, 7,816.13; L. D. Randall & Co. (assumed by the corporation), $2,503.64; total, $22,091.53.

These had all been arranged for and reported to the board informally. There never was any formal action taken by the board. They were always reported to them, and usually read off by John R. Waller.

I have been engaged in banking in Iowa for 17 years. I was connected with a bank in Chicago for a considerable time.

Q. State, if you know, the general usage and practice of national banks in treating in their reports overdrafts previously arranged for as loans or otherwise.

(Objected to—immaterial.)

(The court holds that the defendant will be permitted to prove his knowledge as to how other banks reported before these reports were made as bearing on the question of his intent, but as to the present question the objection is sustained. Defendant excepts.)

Q. Will you state, Mr. Graves, what was your knowledge of the practice of other national banks in respect of reporting overdrafts among loans and discounts prior to the making of these reports by you in 1887?

A. I knew it was the custom.

I had knowledge of the manner and of making the reports of overdrafts arranged for as loans by the First National Bank of Chicago, the Union National Bank of Chicago, the Third National bank, and I was informed by one of the officers of the First National Bank of Chicago that such was the custom in Chicago. It was also the custom in the Commercial National bank and in the First National bank of this city, with which I was formerly connected. In the reports of May 13, August 1, and October 5th I classified

110*k* certain arranged for overdrafts as loans and discounts, and I had no intention at that time to injure or deceive or defraud any one.

Q. What was your belief at that time as to your duty alike to the comptroller, the public, and the bank in respect to the item of overdrafts, classifying those which had been arranged for as loans and discounts and the others as overdrafts?

Objected to by counsel for the Government as incompetent. Objection sustained, and defendant excepts.

—. The control of the Commercial National Bank of Dubuque in 1887 was exercised by C. H. Booth, John R. Waller, William Andrew, and F. D. Stout. They owned the controlling interest and were on board of directors.

Q. I desire to call your attention, Mr. Graves, to the persons who controlled the management, what they did, and how they did it, as to loans and discounts, and as to examining the overdrafts and in the general control of the funds of the bank.

Counsel for the Government object as immaterial and incompetent. Objection sustained, and defendant excepts.

—. I was in Dubuque giving attention to the matters in the bank; only a very small portion of the time between May 1 and October 15; I was mostly in Chicago.

The banks to which I had referred as having knowledge of the manner in which they reported overdrafts, I state that overdrafts which had been arranged for were classified as loans and so reported to the comptroller instead of overdrafts, and those overdrafts were reported as overdrafts only where checks had been paid and no arrangements made in advance. The following are the liabilities reported as liabilities of directors:

1101 *A.* No. 7945, R. E. Graves, 4,000; 7633, R. E. Graves, 5,107.05; 7773, R. E. Graves, 2,500, overdraft of R. E. Graves, classified as loan, 7,072.96; No. 12547, J. K. Graves, 9,000; 12576, J. K. Graves, 4,239.50; 12670, J. K. Graves, 3,062; No. 12577, J. K. Graves, 1,302.03, and overdraft of J. K. Graves, 7,816.13. They aggregate $44,099.67.

(Witness explains in the same manner as in the respect of the report of August 1 and May 13 why he did not put the various items of investment account American Coal Company and other drafts drawn by J. K. Graves and the L. D. Randall and Co. notes among the liability of directors, and also the same statement respecting the contingent fund, the notes of C. H. Booth, which were part of the contingent fund account and not a liability to the bank.

On cross-examination R. E. GRAVES testified that the contingent fund account did not properly belong to the bank, but only subject to the action of the board of directors.

Q. Isn't it a fact that you were directed by the comptroller to pay that $45,000 into the bank; that it was in direct obedience to the direct order of the Comptroller of the Currency that that $45,000 was paid in?

A. I think the comptroller ordered something of that kind.

I think the comptroller ordered something of that kind. It was not paid in the form suggested by the comptroller. It was raised because of his order and put into the bank subject to the action of the directors. I don't remember who paid cash. I know that $30,000 of it was in notes and the balance in cash. I should say

that Stout paid cash and Waller paid cash. General Booth gave notes aggregating to $15,000 that were paid. I gave a note for $5,000, and have the documents which show it was paid.

110*m* Q. Will you look at the General Journal No. 7, July 12, 1887, on page 16, and tell me if the discount of every one of these notes did not go into the discount account of the bank that day?

A. It appears so, but it didn't belong there.

Q. It went into the books of the bank?

A. Improperly so.

Q. I ask you if it didn't go into the earnings of the bank.

A. The books show.

Q. Didn't it go into the earnings of the bank on that day?

A. I have just answered that question.

Q. You won't answer it further?

A. I don't know how to answer.

Q. Wasn't it a fact that the discount of every one of these notes was entered in this journal on that day?

A. That is the interest on the notes. The interest was added to the principal.

Q. And do you mean to say it was interest yet to be earned that you put on the books that day?

A. The notes were charged up in the loans and discounts account.

Q. And so you entered this interest yet to be earned as being earned that day?

A. Yes, sir; according to the common custom.

Q. Although the note was drawing interest until maturity?

A. Yes, sir.

Q. Is there any doubt in your minds that it actually went into the earnings on that day?

A. I have made my answer, covering the case as I understood it. That credit was made there subject to the future action of the board. As I said before, they didn't properly belong on the books and we were at a loss how to treat it. It was entered there until the board should take action.

110*n* The letter shown me is in my handwriting and was addressed to the Comptroller of the Currency, or rather it is a press copy of the letter, signed by all the directors of the bank. I took the $45,00- out of the loans and discounts in the reports for August and October. It was called the contingent fund, and was subject to the action of the board. $15,000 of it was cash actually in the bank on August 1, 1887.

The L. D. Randall & Co. note 12663 was assumed by the corporation which succeeded L. D. Randall & Co. in business. It was assumed when the corporation was organized. The L. D. Randall note that was given in payment of the assessment of $45,000 was like the other notes by Booth, Randall, myself, and J. K. Graves. They were not subject to check and could not properly be the property of the bank until the board had selected objectionable paper in the lieu of them. The amount was paid in specifically to retire objectionable paper, to be designated by the board, and till that was

done they did not belong to the bank. I think I received or saw the letter from the comptroller and noted its contents. The letter was addressed to the board and I called there attention to it repeatedly. I was not running the bank after February, 1888. I refused to serve as a member of the executive committee. They called on me for counsel when there was a difference between Waller and Booth in regard to loans and discounts. Myself and Mr. Harris had charge of the details of the bank. I wrote the reply to the letter from the comptroller. I stated that we had an acceptance of the note or draft by J. K. Graves on the Western
110*o* Union Fuel Co. of Oskaloosa of date May 4, 1887, for $8,411.19. That company was located and had its headquarters at Oskaloosa. The draft was drawn, acceptance wa-ved, and was to be paid by the Western Union Fuel Co., I suppose, to be paid in Dubuque. We had their acceptance of the draft and did not notify anybody in regard to it. I knew H. W. McNeal, the vice-president of the company; had known him here and in Chicago. The memorandum of acceptance was in due form, and we had pledged the dividend on the stock of the company for its payment and its renewals. I cannot remember whether the draft was signed by J. K. Graves, the president, or by the vice-president. The draft may be a renewal of another. I presume it is a renewal. The entry in the journal shows that it is a renewal for just the amount, with accrued interest on the other. I think that the renewals had been continued from as far back as 1885. The drafts were made payable four months after date. I don't know that I attempted to collect it. The arrang-ment in regard to this was made with John R. Waller. The record shows that all loans were made by the board of directors. I was acting under their directions. All loans were reported to the directors. I have no knowledge of any effort being made to collect this draft. Acceptance being waived does not mean that payment was waived. I have stated that we had a general acceptance which we regarded as legal and binding and a pledge of the dividends of the company for this draft or any renewal. I have no recollection of the details. I merely remember the fact. Nothing was ever realized on that debt from its origin, November 20, 1885, until I left the bank. I am not able to state when I first saw Exhibit E, being the note of the Iowa City Gas Light Co., by J. K. Graves, president, dated April 1, 1887.

Q. Do you mean to state that there was a loan made by General Booth or John R. Waller or by the board of directors at that time?

A. I think it was a renewal.

So far as new loans and discounts were made after the connection with Mr. Booth with the bank, all of them, original and
110*p* renewal, were submitted to C. H. Booth and John R. Waller. The books do not show the classification of overdrafts. What I stated was that they were laid before the directors. If the investment account was a loan and discount, it was owed to the bank by the Iowa Iron Works Co. There was in the bank $60,000 of the bonds of the Iowa Iron Works Company owned by the bank and payable by

the company. We took the bonds in lieu of the acceptances of the Iowa Iron Works Company, thereby gaining additional security, as we thought. I took a note from the Iowa iron works for $12,000 to make up the difference between six and eight per cent. It was credited to profit and loss. The entry on the books was January 26, 1886. The $12,000 did not go into the investment account, but was credited to loans and discount accounts. On the other side of the ledger it went into the investment account of $60,000.

Q. But the investment account and the loans and discounts account are on the same side of the ledger?

A. The loans and discounts account was credited in this transaction, including that note, and the investment account was charged.

Q. Isn't it a fact that loans and discounts are part of the resources of the bank?

A. But you asked me about this transaction.

Q. And isn't it a further fact that the investment account is a resource of the bank?

A. Yes, sir.

Q. Both on same side of the ledger?

A. Yes, sir.

Q. You say this $12,000 was credited to loans and discounts account?

A. Yes, sir; in lieu of other paper.

Q. Where did it go, on the other side of the ledger?

A. I stated that we credited loans and discounts account, including that $12,000, on that note; it put the Iowa Iron Works Company paper in better shape. The amount was charged to the investment account.

Q. Now, in that investment account you say you had $60,000 of these bonds, had you?

A. Yes, sir.

Q. Whose liability was that?

A. The Iowa Iron Works Company.

Q. Did you have their note?

A. Coupon bonds secured by mortgage.

A. Did you put them down in loans and discounts?

110*q* —. We did not expect to keep these bonds permanently; they were put in there as a temporary matter; it was simply loans and discount in another form. That was before Booth & Waller became directors. These bonds were included in the $200,000 of objectionable loans which they were to take up when they came in the bank. That agreement was never carried out.

Q. What year?

A. 1886.

Q. What was the agreement of June, 1886?

A. I have asked you to read the records as to that.

Q. What do you mean?

A. I mean the representations made by Gen. Booth. I cannot recall the details of it. I would like the privilege of reading them. I have asked three times for the reading of the records—the repre-

sentations whereby I was induced to purchase stock for Mr. Booth, if possible.

The agreement on the part of Stout and Andrew that if I would agree to sell $35,500 of the stock of the Commercial National bank at 120 per share, that they would take up some of the larger loans now being carried by the bank to any amount up to $200,000, if necessary—that agreement was never carried out. I was not present when the agreement was made: it was laid before the board for their approval, and that is the reason why these bonds were 110*r* carried in the investment account. It was thought to be temporary. They were running the bank; I was not, except as to the details, but I was president all the time. I have stated that I was president, but the board of directors was managing the bank. I do not remember who was most active in this management when Waller was in Europe.

On redirect examination R. E. GRAVES testified: My resignation as president and director was made on the 11th of February, 1888. I see by the record of the proceedings of the board of directors of that date that they took action in respect to the contingent fund on February, 1888. No action was taken prior to that time, although I repeatedly requested it. All loans and renewals after June 1st, 1887, were made by authority and approval of John R Waller and C. H. Booth, one or both. Waller was a director in the bank in 1885, and up to 1886 he was not director from January to June, 1886.

C. H. HARRIS, called as a witness for defendant, testified: I made some reports to the comptroller and looked over all of them. I had to sign them as cashier; the classifications of the overdrafts as book loans and overdrafts was correctly made in the reports. I remember that at a meeting of directors the overdrafts were given to them on different papers headed—one, book loans; the other, overdrafts.

(In response to questions this witness answered fully and substantially as to Mr. Graves in respect to the overdrafts and loans and discounts, investment account, suspended loans, and directors' liabilities in each of the reports of May 13, August 1, and October 2. After the witness had gone fully over the reports and several items thereof, he was asked the following question, viz:

110*s* Q. Will you state, if you know, what had been the custom or practice of the banks in which you had been engaged with respect to reporting all overdrafts which were arranged for as loans and discounts? I limit your experience anterior to the period of the finding of the indictment.

Objected to as immaterial. Sustained, and defendant excepts.

—. I presume I conversed with Mr. Graves before making the reports of May 13, August 1, and October 5 as to the practice in other banks in which I had been engaged with respect to reporting overdrafts

arranged for as loans when making their reports to the comptroller. When I was in the First National bank D. M. Cooley was president, C. H. Eighmey was cashier, and O. E. Guernsey was assistant cashier. I know remember that shortly after my change from that bank to the Commercial National bank a report was to be made to the Comptroller of the Currency, and I then told Mr. Graves of the custom of the bank I had previously been with.

On cross-examination the witness C. H. HARRIS testified as follows: I commenced with the Commercial National bank in May, 1881, and continued in its employment until the receiver took possession and for about two months after. I have examined all the reports. I signed them all and know their contents. I knew at the time they were made of the classifications of the overdrafts and how the amount of liabilities of directors was reached; also loans and discounts. I took part in making the reports and making the figures, and I was familiar at the time with the classification and method of reporting the overdrafts. I swore to those reports. The $45,000 called the contingent fund went into the bank about July 11. The notes were entered in the discount register and were 110½ charged to loans and discounts. $15,000 of it was in cash.

I said in my direct examination that no part of the contingent fund belonged to the bank, but was held subject to the direction *to* the board of directors; so, also, the $15,000 cash part of it. The 45,000 was deducted from the assets, because we considered that we held it subject to the action of the board of directors, who were to designate the objectionable paper that was still listed in the loans and discounts.

R. E. GRAVES, being called for further cross-examination, testified as follows:

I believe I testified in my examination-in-chief that I made out these reports of May 13, August 1, and October 5, 1887, in the same manner in which I had been accustomed to make like reports at the bank before that time.

Q. Will you look at your report which I now show you of the condition of the bank on the 24th day of April, 1884, and see what was the amount of the overdrafts you reported on that day?

A. $5,104.69.

Q. Now, look at the individual balance book for that day and see if the overdrafts weren't $149,000, as shown by the books of the bank.

Objected to as not proper cross-examination and as incompetent, irrelevant, and immaterial. Objection overruled, and defendant excepts.

A. That is correct, $149,724.05.

By Judge COLE, for defendant:

Q. I will ask you if the overdrafts in excess of the amount stated

in the report, if you are able to go over the list, if they were arranged for; and, if so, whether they were classed as book loans.

A. They were.

Recross-examination by District Att'y O'CONNELL:

Q. Have you any recollection now of what they are and who owed them?

A. It would be impossible for me to remember.

Q. Take, for example, the overdrafts of R. E. Graves for that day, $25,733.25. Will you tell the jury if that was arranged for and with whom?

Objected to as immaterial, incompetent, and irrelevant, and not proper recross-examination. Objection overruled, and defendant excepts.

No answer.

Q. Will you turn to the item of overdrafts in the individual balance D for the 24th day of April, 1884?

Same objection as above, incompetent, irrelevant, and immaterial, and not proper recross-examination. Objection overruled,
110*a* and defendant excepts.

A. $5,*LO8*.69.

The counsel for the defendant offer in evidence the certified copy of the report of the condition of the Commercial National Bank of Dubuque, Iowa, at the close of business on the 27th day of August, 1886; which report is signed by C. H. Booth, John R. Waller, and C. H. Harris. Copy hereto attached, marked Exhibit No. 70. Counsel for the Government object to the introduction of same as incompetent, irrelevant, and immaterial; the entire report or any item thereof has nothing to do with this case. Objection sustained, and defendant excepts.

C. H. EIGHMEY, called as a witness for defendant, testified: I was a director in the First National Bank of Dubuque while Mr. Graves was there as president.

Q. I enquire whether you are acquainted with the manner in which that bank up to 1888 made its reports to the Comptroller of the Currency.

Objected to by counsel for the Government as immaterial.

Counsel for defendant announced that they asked the question as it tended to show the practice heretofore.

Objection sustained, and defendant excepts.

Q. I will ask this witness to state what was the uniform practice of that bank in making its reports to the comptroller as to classifying these overdrafts into loans and discounts, so far as placing the overdrafts which were arranged for in the class of loans and discounts?

Same objection sustained, and defendant excepts.

Counsel for defendant state that they expect to prove by
110*v* this witness, in answer to this question, that it was the uniform practice of the First National Bank of Dubuque, Iowa, in making its reports to the comptroller of the condition of the bank to classify its overdrafts in such report by placing those overdrafts which had been arranged for as loans and discounts, and only those not arranged for as overdrafts.

Counsel for Government make same objection as to last. Same ruling. Defendant excepts.

Q. I would like to ask the witness whether or not he is acquainted with the general practice, usage, or custom of national banks in the State of Iowa and in the neighboring States upon the subject of classifying arranged-for overdrafts in ther reports to the comptroller as a part of the loans and discounts up to 1888.

Objected to by counsel for the Government as immaterial and incompetent. Objection sustained, and defendant excepts.

Counsel for defendant state that they expect to prove by this witness that the practice, as before stated, which obtained in the First National bank obtained in the State of Iowa and adjoining States.

Same objection and same ruling, and defendant excepts.

Counsel for defendant now offer in evidence the deposition of Lyman J. Gage, president of the First National Bank of Chicago.

Counsel for the Government object to the deposition as incompetent and immaterial, making the objection not to the form of the deposition, but the testimony therein. Objection sustained, and defendant excepts.

(Copy of same hereto attached, marked Exhibit 3.)

Counsel for defendant offer in evidence the deposition of
110*w* J. J. P. O'Dell; to which offer the counsel for the Govern- make the same objection as to the offer of that — Lyman J. Gage. Objection sustained, and defendant excepts.

(Copy of same hereto attached, marked Exhibit 4.)

Counsel for the defendant offer in evidence the deposition of Charles A. Foisom; to which the counsel for the Government make the same objection as above.

Same ruling by the court, and the defendant excepts.

(Copy of same hereto attached, marked Exhibit 5.)

Counsel for the defendant offer in evidence the deposition of John R. Walsh; to which offer the counsel for the Government make the same objection as above stated. The court makes the same ruling, and the defendant excepts.

(Copy of same hereto attached, marked Exhibit 6.)

On Rebuttal.

Counsel for the Government offer in evidence Exhibit U.

(Copy hereto attached.)

Counsel for the defendant object to the same as irrelevant, incompetent, and immaterial and not proper rebuttal.

Objection overruled, and defendant excepts.

Counsel for the Government offer in evidence Exhibit Q. (Copy hereto attached.)

To which the counsel for the defendant make the same objection; which objection is overruled by the court, and defendant excepts.

The defendant's counsel, desiring to call as a witness on behalf of defendant Mr. J. K. Graves, and he being unable to be present, being confined to his house by illness, it is agreed between counsel for defendant and counsel for the Government that if Mr. Graves

110*x* were present in court he would testify as follows:

Q. State your name, age, and residence.

A. J. K. Graves; lawful age; Dubuque, Iowa.

Q. State whether or not you were formerly a director in the Commercial National Bank of Dubuque, Iowa, and from what time to what time.

A. I was a director from about September, 1872, to March, 1888.

Q. State whether or not there was ever any acceptance of draft No. 11551 dated February 23, 1886, made by you on the American Coal Company for $7,813.20, and the draft No. 12534, dated May 4, 1887, made by you on the Western Union Fuel Company for $8,416.19; and, if so, state when and how the same was made.

A. There was such acceptance of each of said drafts. The acceptance was in writing and was made by the president or vice-president of said companies. My best recollection now is that each of said acceptances was made by H. W. McNiel, vice-president, but of this I am not certain. It may have been made by myself as president. The writing stated directly the acceptance of the drafts, and further stated that the company had been directed to apply in payment thereof the dividends upon the stock then owned by J. K. Graves in each company, which was about $50,000, and which stock had always yielded not less than 6 per cent. per annum dividend. It was also stated in said writing that said acceptance should apply to any renewals for the same debt. The writing was either sent or handed to the president of the bank. I cannot fix the precise date of the acceptance, but think, as I now remember, that it was shortly after the giving of the first drafts, which must have been in the early part of 1886.

110*y* Q. State if you know why said drafts were not pressed for payment at their maturity.

A. After General Booth and his associates purchased the majority of the stock or controlling interest in the bank there was an executive committee appointed to manage the finances. In connection with the purchase by General Booth and his associates of this stock it was agreed that they would furnish money to take from the bank certain of its large loans and those which were objectionable by reason of length of time they had run or other cause. Directly after the appointment of that committee I commenced negotiations with its chairman, John R. Waller, for the taking up of all paper in the bank which had my name on it either as maker, indorser, guarantor, or otherwise. These negotiations continued up till Mr.

Waller left, and were occasionally spoken of by me with General Booth, who was also on that committee. It was confidently expected by me that directly after Mr. Waller's return I would be able to consummate that arrangement for the taking up of all paper having my name upon it, as above stated. During the pendency of the negotiation I advised the president of the bank that such negotiations were pending, and that I desired the matters to remain as they were until I accomplished it or it should be known that it could not be accomplished. I was also a member of that committee, and the negotiations were prolonged by reason of our relations and the delays so often attend such transactions. So far as I know these are the reasons why the drafts were not pressed for collection.

Q. State whether or not any arrangement was made by you for your overdrafts as stated, as shown by the books, on May 13th, August 1, and October 5th, 1887; and, if so, what was it and with whom was it made. 110z

A. My overdraft was reduced very much after the sale to General Booth, but was afterwards increased a few thousand dollars. Before making such increase, which may have occurred more than once, I did, at each time, arrange with John R. Waller for making the overdraft, and it was made upon my telling him what uses I had for the money and when and the sources from which I expected to meet such overdrafts.

Q. State whether or not at meetings of the board of directors you ever saw any list of overdrafts; and, if so, state whether the same were classified and how.

A. I did see such list frequently when I was attending the meetings of the board, and such overdrafts were classified in two lists, one marked "Overdrafts" and the other "Book loans."

Counsel for the Government offer in evidence Exhibit O (copy hereto attached); to which offer the defendant, by his counsel, objects as incompetent, immaterial, and irrelevant and not proper rebuttal. Objection overruled, and the defendant excepts.

Counsel for the Government offer in evidence press copy of the reply to the letter of the Comptroller of the Currency, signed by the defendant and certain directors (copy hereto attached, marked Exhibit C 2nd).

Counsel objects to the same as incompetent, irrelevant, and immaterial, it purporting to be but a copy, and therefore not the best evidence and not proper rebuttal testimony. Objection overruled, and defendant excepts.

The counsel for the Government offer in evidence part of the directors' minutes, found on page 234, in the handwriting of C. H. Harris (copy of same hereto attached, part of Exhibit 1). 110&

Counsel for the defendant makes the same as last objection to this offer. Objection overruled, and defendant excepts.

General STONE, called as a witness by the Government, testified as follows: I cannot identify papers, but I took charge of all the

assets of the bank at the time it was closed. I found papers similar to the notes and drafts shown me (Exhibits G & H), but cannot identify them. Some paper which was quoted to me by R. E. Graves as commercial I called it "Kiting paper." He did not claim that it had been accepted.

General C. H. BOOTH, called in rebuttal, testified: I have in my p-ssession the written contract under which I made the purchase of the $35,500 stock in the Commercial National Bank of Dubuque, and I now here produce it, and it is marked Exhibit Y.

Q. General Booth, I now hand you a paper marked "Exhibit Y," dated May 10, 1886, and signed R. E. Graves and C. H. Booth, and wish you to tell me when and where you first saw that paper.

Counsel for the defendant object to same as incompetent, irrelevant, and immaterial, and not proper rebuttal. Objection overruled, and defendant excepts.

Q. Tell me whether or not this is the contract of purchase under which you brought your stock in the Commercial National bank in May, 1886.

Counsel for the defendant offer the same objection as
110*aa*–198 last above stated. Objection overruled, and defendant excepts.

A. Yes, sir.

Counsel for the Government then offered in evidence Exhibit Y; to the offer of which counsel for the defendant objected on the grounds that it was immaterial, incompetent, and irrelevant, and not proper rebuttal. Objection overruled, and defendant excepts.

F. D. STOUT, called in rebuttal as a witness by the Government, testified: I went into the bank about the same time as General Booth, and was director with him all the time. I never heard of any agreement in connection with Generals Booth's and his associates' purchase of stock that he and his associates would furnish money to take up objectionable loans. I bought my stock about the same time that General Booth bought his. I have heard the cashier read the list of overdrafts; I cannot recollect as having seen them. I never heard them classified one part as "book loans" and the other part as "overdrafts."

199 EXHIBIT B.

OFFICE OF THE COMPTROLLER OF THE CURRENCY.
Form 36.

SCHEDULES.

Loans and Discounts.

On paper with two or more individual or firm names	$407,466 89		
On single-name paper (one person or firm) without other security	55,131 71		
On mortgages and other real-estate security—how acquired			
On U. S. bonds (demand loans)			
On other stocks, bonds, &c. (demand loans)			
On time, secured by collaterals	88,450		
		551,048	60
Included in the above are—			
Bad debts, as defined in section 5204, Rev. Stat.	$316 secured		
Other suspended and overdue paper			
Liabilities of directors (individual and firm) as payers)	69,500		

Other Stocks, Bonds, and Mortgages.

O. L. & P. Co. bonds	9,000		I. I. W. Co. p'f'd stock	6,000	
D. O. M. Co.	40,000		Do. com. "	2,500	
Corp. "New Melleray"	1,000		D. P. B. Co. " "	400	

Due from Approved Reserve Agents.

Nat'l B'k Republic N. Y.	14,031	20			
1 Nat'l B'k Chicago	30,455	34			
H. & L. Nat'l B'k Chicago	10,740	11			

Due from State and Private Banks and Bankers.

(Such items only as exceed one-tenth of the capital of this bank.)

Checks and Other Cash Items.

Checks and drafts on banks, &c., in this city	13,659	80	U. S. refunding certificates		
Checks and drafts on other banks					
Coupons					

Average Reserve and Interest.

Average reserve for last 30 days (in bank and with reserve agents) was 20 per cent. of deposits and bank balances.

The highest rate of interest paid by the bank is 4 per cent., ctfic. dept., except special rates made with stockholders.

No. of bank, 1801. (Use the blank lines if necessary, but do not

Report of the Condition of "The Commercial National Bank," at Dubuque,

DR.

Resources.		Dollars.	Cts.
1. Loans and discounts (see schedule)		551,048	60
2. Overdrafts		2,948	58
3. U. S. bonds to secure circulation (par value), 4½ per cents, — per cents		25,000	00
4. U. S. bonds to secure deposits (par value), — per cents			
5. U. S. bonds on hand (par value), — per cents			
6. Other stocks, bonds, and mortgages (see schedule)		58,900	
7. Due from approved reserve agents (see schedule)		55,226	65
8. Due from other national banks		20,829	04
9. Due from State and private banks and bankers (see schedule)		1,160	67
10. Banking-house	$		
11. Other real estate			
12. Furniture and fixtures		6,347	31
13. Current expenses and taxes paid		1,685	45
14. Premium paid on bonds for circulation		2,638	81
15. Checks and other cash items (see schedule)		13,659	80
16. Exchanges for clearing-house			
17. Bills of other banks		4,383	
18. Fractional paper currency, nickels, and cents			
19. Specie, viz: Gold coin	$9,491 40		
Gold Treasury certificates (sec. 254 Rev. Stat.)			
Gold Treasury certificates (sec. 12, act of July 12, 1882)			
Gold clearing-house certificates			
Silver coin, dolls., 800; fract'l	3,482 94		
Silver Treasury certificates (act Feb'y 28, 1878)			
		12,974	04
20. Legal-tender notes		26,500	
21. United States certificates of deposit for legal-tender notes (sec. 5193, Rev. Stat.)			
22. Redemption fund with U. S. Treasurer (not more than 5 per cent. on circulation)		1,125	
23. Due from U. S. Treasurer (other than 5 per cent. redemption fund)			
Total		784,426	95

STATE OF IOWA, }
County of Dubuque. }

Sworn to and subscribed before me this 5th day of August, 1887.

[SEAL.] THOMAS R. BOARD,
A Notary Public of Iowa in & for Dubuque County.

Treasury Department,
Office of the Comptroller of the Currency. }
Form 36. }

NOTE.—This report is to be made at such times as may be designated by the assistant cashier, attested by not less than three directors, and forwarded to the will subject the bank to a penalty of one hundred dollars. See sections 5211 and

erase or change any of the printed items.)

in the State of Iowa, at the Close of Business on the 1st Day of August, 1887.

CR.

Liabilities.		Dollars.	Cts.
1. Capital stock paid in		100,000	
2. Surplus fund		30,000	
3. Undivided profits		6,396	06
4. Circulating notes received from Comptroller	$		
Less am't on hand and in Treasury for redemption		22,500	
5. State-bank circulation outstanding			
6. Dividends unpaid			
7. Individual deposits subject to check	$133,446 11		
8. Demand certificates of deposit	54,255 83		
9. Time certificates of deposit	136,608 43		
10. Certified checks			
11. Cashier's checks outstanding		324,310	36
12. United States deposits			
13. Deposits of U. S. disbursing officers			
14. Due to other national banks		86,855	87
15. Due to State and private banks and bankers		145,539	58
16. Notes and bills rediscounted		68,825	08
17. Bills payable			
Total		784,426	95

I, C. H. Harris, cashier of "The Commercial National Bank of Dubuque," do solemnly swear that the above statement is true to the best of my knowledge and belief.

C. H. HARRIS, *Cashier.*

Correct.
Attest:

C. H. BOOTH,
JOHN R. WALLER,
R. E. GRAVES,
} *Directors.*

Comptroller of the Currency, to be sworn to by the president or cashier, not by Comptroller of the Currency without delay. Each day's delay, after five days, 5213, Revised Statutes of the United States.

200

EXHIBIT C.

SCHEDULES.

Loans and Discounts.

On paper with two or more individual or firm names.	$382,122	24		
On single-name paper (one person or firm) without other security	76,344	21		
On mortgages and other real-estate security—how acquired				
On U. S. bonds (demand loans)				
On other stocks, bonds, &c. (demand loans)				
On time, secured by collaterals	33,126	40		
			491,592	85
Included in the above are—				
Bad debts, as defined in section 5204, Rev. Stat				
Other suspended and overdue paper	144,873	50		
Liabilities of directors (individual and firm) as payers	49,867	40		

Other Stocks, Bonds, and Mortgages.

D. O. M. bonds	40,000			
I. I. W. Co. p'f'd stock	6,000			
com. "	2,500			
D. P. Bridge Co. "	400			

Due from Approved Reserve Agents.

Nat'l B'k Republic N. Y.	18,802	77		
1 N'l B'k Chicago	23,350	75		
H. & L. N'l B'k Chicago	7,169	83		

Due from State and Private Banks and Bankers.

(Such items only as exceed one-tenth of the capital of this bank.)

Checks and Other Cash Items.

Checks and drafts on banks, &c., in this city	17,771	80	U. S. refunding certificate	
Checks and drafts on other banks				
Coupons				

Average Reserve and Interest.

Average reserve for last 30 days (in bank and with reserve agents) was 17 per cent. of deposits and bank balances.

The highest rate of interest paid by the bank is 4 per cent. on ctfi. dep. & except special arrangements with stockholders.

REPORT OF THE CONDITION

OF

THE COMMERCIAL NATIONAL BANK AT DUBUQUE, ETC.

No. of bank, 1801. (Use the blank lines if necessary, but do not

Report of the Condition of "The Commercial National Bank at Dubuque,

DR.

Resources.			Dollars.	Cts.
1. Loans and discounts (see schedule)			491,592	85
2. Overdrafts			5,344	60
3. U. S. bonds to secure circulation (par value), — per cents, 4½ per cents			25,000	
4. U. S. bonds to secure deposits (par value), — per cents				
5. U. S. bonds on hand (par value), — per cents				
6. Other stocks, bonds, and mortgages (market value; see schedule)			48,900	
7. Due from approved reserve agents (see schedule)			49,323	35
8. Due from other national banks			8,649	95
9. Due from State and private banks and bankers (see schedule)			1,206	15
10. Banking-house				
11. Other real estate		$839 67		
12. Furniture and fixtures		6,347 31		
			7,186	98
13. Current expenses and taxes paid			13,378	92
14. Premium market value on bonds for circulation, $25,000; other premiums, $—			2,638	81
Bonds (market value), $—				
15. Checks and other cash items (see schedule)			17,771	80
16. Exchanges for clearing-house				
17. Bills of other banks				
18. Fractional paper currency, nickels, and cents				
19. Trade dollars				
20. Specie, viz: Gold coin		$2,553 50		
Gold Treasury certificates				
Gold clearing-house certificates				
Silver coin, dolls., 900; fract'l		3,335 04		
Silver Treasury certificates (act Feb'y 28, 1878)				
			5,888	54
21. Legal-tender notes			30,000	
22. United States certificates of deposit for legal-tender notes (sec 5193, Rev. Stat.)				
23. Redemption fund with U. S. Treasurer (not more than 5 per cent. on circulation)			1,125	
24. Due from U. S. Treasurer (other than 5 per cent. redemption fund)				
Total			718,469	95

STATE OF IOWA, }
County of Dubuque. }

Sworn to and subscribed before me this 10 day of October, 1887.

[SEAL.] HERMAN ESCHEN,
Notary Public.

[Written across the face in red ink:] Must be acknowledged before an officer having an official seal. See act approved Feb. 26, 1881.

NOTE.—This report is to be made at such times as may be designated by the assistant cashier, attested by not less than three directors, and forwarded to the will subject the bank to a penalty of one hundred dollars. See sections 5211 and

erase or change any of the printed items.)

OFFICE OF THE COMPTROLLER OF THE CURRENCY.
Form 36. Reports 1, 25, '87, 50,000.

in the State of Iowa, at the Close of Business on the 5th Day of October, 1887.

CR.

Liabilities.		Dollars.	Cts.
1. Capital stock paid in		100,000	
2. Surplus fund		30,000	
3. Undivided profits		13,021	65
4. Circulating notes received from comptroller	$		
Less am't on hand and in Treasury for redemption.		22,500	
5. State-bank circulation outstanding			
6. Dividends unpaid			
7. Individual deposits subject to check	$133,132 71		
8. Demand certificates of deposit	179,647 77		
9. Time certificates of deposit			
10. Certified checks			
11. Cashier's checks outstanding			
12. United States deposits		312,780	48
13. Deposits of U. S. disbursing officers			
14. Due to other national banks		69,595	52
15. Due to State and private banks and bankers		138,367	86
16. Notes and bills rediscounted		32,204	44
17. Bills payable			
Total		718,469	95

I, C. H. Harris, cashier of "The Commercial National Bank of Dubuque," do solemnly swear that the above statement is true, to the best of my knowledge and belief.

C. H. HARRIS, *Cashier.*

Correct.
Attest:

JOHN R. WALLER,
L. D. RANDALL,
R. E. GRAVES,
} *Directors.*

Comptroller of the Currency, to be sworn to by the president or cashier, not by Comptroller of the Currency without delay. Each day's delay, after five days, 5213, Revised Statutes of the United States.

8—31

201 "EXHIBIT C 2D."

JULY 11, 1887.

Hon. W. L. Tremholm, Comptroller of the Currency, Washington, D. C.

DEAR SIR: In conformity with your instructions under date of July 1 we have the pleasure to inform you that the subject-matter has received the prompt attention its importance demanded and $45,000 has already been contributed and paid over to the cashier.

The president, as directed, will report to you further in detail as progress is made in the good work so well begun.

Very respectfully yours,

R. E. GRAVES, *President.*
C. H. BOOTH,
WM. ANDREW,
L. D. RANDALL,
J. K. GRAVES,
JOHN R. WALLER,
F. D. STOUT,
} *Directors.*

EXHIBIT E.

$5,569.47. DUBUQUE, IOWA, *April* 1, 1887.

Four months after date we promise to pay to the order of J. K. Graves fifty-five hundred sixty-nine $\frac{47}{100}$ dollars, at the Commercial National Bank of Dubuque, value received, with interest at 8 per cent. per annum after date.

If this note is not paid at maturity the undersigned agree to pay expenses of collection, including attorneys' fees.

IOWA CITY GAS LIGHT CO.,
By J. K. GRAVES, *Pres't.*

(Indorsed:) Waiving demand & notice of protest. J. K. Graves.

202 EXHIBIT F.

DUBUQUE, IOWA, *January* 26, 1886.

For value received I hereby sell, assign, and transfer to the Commercial National Bank of Dubuque the securities listed in the accompanying schedule, mainly held for the past year by said bank as collateral security for any and all paper with my name as indorser or maker, said securities being of the par value of $877.00.

In further consideration of this my obligation to repurchase the same within twelve months from date hereof, I hereby guarrantee the income to said bank shall equal 8% per annum, payable quarterly, until purchased by me, should said bank not dispose of the same at better rates before said date for cash with my approval.

J. K. GRAVES.

Purchase price and above guaranty, $30,098.42, at 8%; int. obligation to repurchase at same rate, viz., $30,098.42, & int. 8%, Jan'y 26, '86.

(In pencil:)

1,408 60 p'd July 9, '86;
13,000 00 p'd Sept. 1, '86;
120 00 p'd Feb. 14, '87;
120 00 p'd May 10, '87.

14,648 60, leaving balance due $15,449.82 & int. from May 1, '87.

EXHIBIT G.

$7,813.20. DUBUQUE, IOWA, *May 26th*, 1886.

Pay to the order of myself (acp. waived), with int. 8%, seventy-eight hundred thirteen $\frac{20}{100}$ dollars, value received, and charge to account of—

J. K. GRAVES.

To American Coal Co., Oskaloosa, Ia.

(Indorsed:) J. K. Graves.

EXHIBIT H.

$8,416.19. DUBUQUE, IOWA, *May* 4, 1887.

Four months after date pay to the order of myself, with int. 8%, acceptance waived, eighty-four hundred sixteen $\frac{19}{100}$ dollars, value received, and charge to account of—

J. K. GRAVES.

To Western Union Fuel Co., Oskaloosa, Ia.
No. —. Sept. 4–7.

203 EXHIBIT I.

$4,126.73. DUBUQUE, IOWA, *May 26th*, 1887.

Four months after date I promise to pay to the order of myself forty-one hundred twenty-six .73 dollars, at the Commercial National Bank of Dubuque, value received, with interest at 8% per annum after date.

If this note is not paid at maturity the undersigned agree to pay expenses of collection, including attorneys' fees.

J. K. GRAVES.

(Indorsed:) J. K. Graves; Commercial National bank, Dubuque, Iowa. C. H. Harris, C.

EXHIBIT J.

$3,000. DUBUQUE, IOWA, *July 14th*, 1887.

Three months after date I promise to pay to the order of myself three thousand dollars, at the Commercial National Bank of Du-

buque, value received, with interest at 8 per cent. per annum after date.

If this note is not paid at maturity the undersigned agree- to pay expenses of collection, including attorneys' fees.

10,000 cable stock as col.

J. K. GRAVES.

(Indorsed:) J. K. Graves. Pay C. H. Harris, cashier, or order, for collection for account of First National bank, McGregor, Iowa.

EXHIBIT K.

$4,000. DUBUQUE, IOWA, *Dec.* 15, 1881.

On demand, after three months after date, I promise to pay to the order of the Commercial National Bank of Dubuque four thousand dollars, at the Commercial National Bank of Dubuque, value received, with interest at 8 per cent. per annum after date.

R. E. GRAVES.

(Indorsed.)

Int. in full to Aug. 18, p'd 8, 16.
Leave $4,082.67 & int. from Aug. 18 is due.
Int. to 1, 1, '83, ch'g'd 12, 30.
$163.30 int. to July 1, '83, ch'g'd 8, 7.
80 int. to Oct. 1, '83, ent'd 9, 28.
133.33 int. to M'ch 1, '84, ch'g'd 3, 8.
233.33 int. to Jan'y 1, '85, ch'g'd 1, 16, '85.
140 int. to Jan'y 1, '85, ch'g'd 7, 12, '85.
140 int. to Jan'y 1, '86, ch'g'd 6, 5, '86.

204 EXHIBIT L.

$5,107.05. DUBUQUE, IOWA, *July* 1, 1881.

On demand, after date, I promise to pay to the order of the Commercial National Bank of Dubuque fifty-one hundred and seven .05 dollars, at the Commercial National Bank of Dubuque, value received, with interest at 7 per cent. per annum after date.

R. E. GRAVES.

(Indorsed on face.)

In lieu of M. H. Moore *lo* Pac. R. R. paper same amount.

(Indorsed on back.)

$89.37 int. to Oct. 1, paid 10, 17.
148.95 int. to M'ch 1, paid 3, 1.
148.95 int. to Aug. 1, paid 8, 16.
Int. to 1, 1, '83, ch'g'd 12, 30.
178.74 int. to July 1, '83, ch'g'd 8, 7, '83.
89.36 int. to Oct. 1, '83, ch'g'd 9, 28.

148.75 int. to March 1, '84, ch'g'd 3, 18.
297.90 int. to Jan. 1, '85, ch'g'd 1, 16, '85.
175 int. to July 1, '85, ch'g'd 1, 10, '85.
175 int. to Jan'y 1, '86, ch'g'd 6, 15, '86.

EXHIBIT M.

$2,500.00. DUBUQUE, *Sept.* 7, 1881.

On demand, after date, I promise to pay to the order of the Com'l Nat'l bank twenty-five hundred dollars, at said bank, value received, with interest at 8 per cent. per annum.

If this note is not paid at maturity the undersigned agree to pay expenses of collection, including attorneys' fees.

R. E. GRAVES.

(Indorsed.)

83.33 int. to Feb'y, ch'g'd 3, 1.
100 int. to Aug. 27, ch'g'd 8, 16.
Int. to Jan'y 1, '83, ch'g'd 12, 30.
$100 int. to Jan'y 1, '83, ch'g'd 8, 7, '83.
50 int. to Oct. 1, '83, ent'd 9, 28.
82.33 int. to M'ch 1, '84, ch'g'd 3, 8, '84.
145.33 int. to Jan. 1, '85, ent'd 1, 16, '85.
87.50 int. to July 1, '85, ch'g'd 7, 13, '85.
87.50 int. to January 1, '86, ch'g'd 6, 5, '86.

205 EXHIBIT O. A. 1801.

TREASURY DEPARTMENT,
OFFICE OF THE COMPTROLLER OF THE CURRENCY,
WASHINGTON, *July* 1, 1887.

GENTLEMEN: The report of an examination of your bank made on the 13th ult. has been received.

It appears from the report that the capital stock of your association is impaired some $45,000, as follows:

Loss on L. D. Randall notes	12,000	
Loss on Oat Meal Co. bonds and notes	40,000	
Notes carried in "suspended account"	10,000	
Overdrafts	18	
Premium account	263	81
Cash items (expenses)	180	
Futniture & fixtures (vault in former office, etc.)	4,347	31
Expense account	7,409	
Interest account	10,040	
Total	84,258	12

To be charged off and paid as follows:

Surplus fund		30,000
Undivided profits	20,683 40	
Less note of J. K. Graves, given for interest on bonds of Iowa iron works; this cannot be credited to interest account until paid.	12,000	
		8,683 40
Assessment of 45 % on capital (100,000)		45,000 00
		83,683 40
Amount to be paid out of first profits accumulated		574 72
		$84,258 12

There are also losses of several thousand dollars on the large amount of past-due paper, which I cannot estimate very well, but which should be ascertained and promptly charged off before declaring a dividend. This overdue paper should receive prompt and vigorous attention.

I enclose herewith a notice issued under section 5205, U. S. Revised Statutes, requiring an assessment of $45,000 to be levied on the stockholders of your association. Upon collection of this assessment you will charge off the losses and make the reductions of value as stated.

It appears from the report that the lawful money reserve was short $16,308.83 on the day of the examination.

Attention is called to section 5191, U. S. R. S., which prohibits national banks from making any new loans or discounts under such conditions. Constant attention should be paid to the state of your lawful money reserve.

The following loans exceed the limit prescribed by section 5200, U. S. Revised Statutes:

206	Iowa iron works	$134,038
	L. C. Graves	26,250
L. K. Graves		30,000
J. K. Graves		36,936
R. E. Graves		21,355
Church & Graves Mfg. Co		43,305
E. M. Dickey Co		15,000
H. W. McNiel		12,328
Thompson & Maclay		14,355
J. S. Randall		30,726
L. D. Randall		19,049

Attention is again called to the unlawful use of the bank's funds by its officers and directors and to the individual liabilities which you have incurred under section 5239, U. S. R. S.

I must ask that these loans be reduced immediately to within the limit prescribed by section 5200, U. S. R. S. The relation- between your bank and the Iowa iron works and the other Graves

enterprises appear to be such as should not exist. A manufacturing company should have a commercial capital of its own, sufficient to handle its ordinary business, and should go into the bank only in case of emergency or for temporary accommodations.

If these companies are really dependent upon your bank for large and continuous loans, that of itself would seem to be evidence of the undesirable character of the paper. It does not inspire confidence in the management of a corporation to find it without sufficient means of its own for ordinary and constant needs, and therefore always at the mercy of a bank. On the other hand, the directors of a bank have no right to use its capital and deposits for carrying on a manufacturing business.

I fear you do not realize the responsibility resting upon the directors in the management of a national bank. Should the time come for the enforcement of the law under section 5239, U. S. R. S., it will be enforced to the fullest extent.

The accounts of rediscounts and demand certificates (virtually bills payable) are enormous and should be reduced at once. If you would keep your loans within the limit, these accommodations would not be necessary. They are reported as follows:

Bills rediscounted:		
First National bank, Chicago	38,551	10
National Bank Republic, New York	19,450	00
First National bank, McGregor, Iowa	27,037	29
	85,038	39
Demand certificates of deposit:		
National Bank Republic, New York	30,000	
First National Bank of Chicago	10,000	
Total	$125,038	39

The Church & Graves Manufacturing Co. drafts on their customers cannot be discounted as commercial paper unless accepted by the drawees.

The overdrafts are in *a* large amounts and some of them have been running for a long time.

There are many irregular cash items reported and this
207 account should be cleaned up.

An early reply to this letter over your individual signatures will be expected.

Very respectfully,

J. D. ABRAHAMS,
Deputy and Acting Comptroller.

To the directors of the Commercial National bank, Dubuque, Iowa.

EXHIBIT P. A. 1801.

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF CURRENCY,
WASHINGTON, *July* 1, 1887.

SIR: I enclose herewith a notice issued under section 5205 of the Revised Statutes of the United States, requiring an assessment of $45,000 to be levied on the stockholders of your association; also a letter to the board of directors regarding certain violation- of law and other irregularities, and containing an estimate of the losses sustained and reductions of value which should be made.

Please acknowledge receipt of this letter and keep me advised of such steps as are taken in pursuance of these instructions.

Very respectfully, J. D. ABRAHAMS,
Deputy & Acting Comptroller.

R. E. Graves, Esq., pres't Commercial National bank, Dubuque, Iowa.

EXHIBIT Q. A. 1801.

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE CURRENCY,
WASHINGTON, D. C.

The capital stock of the Commercial National Bank of Dubuque, Iowa, having become impaired to the extent of forty-five thousand dollars ($45,000), as appears from the official report of an examination of its affairs, dated June 13, 1887, by George A. Stone, a duly appointed national bank examiner, and the stockholders of said bank having failed to make good said impairment of capital—

Notice is hereby given to said bank, under the provisions of section 5205 of the Revised Statutes of the United States, to pay the deficiency in its capital stock by assessment upon the stockholders *pro rata* for the amount of capital stock held by each of them, and if such deficiency shall not be paid and said bank shall refuse to go into liquidation, as provided by law, for three months after
208 this notice shall have been received by it, a receiver may be appointed to close up the business of the association, according to the provisions of section 5234 of the Revised Statutes of the United States.

In testimony whereof I have hereto subscribed my name and caused my seal of office to be affixed to these presents at
[SEAL.] the Treasury Department, in the city of Washington and District of Columbia, this first day of July, 1887.

J. D. ABRAHAMS,
Deputy and Acting Comptroller.

To the Commercial National Bank of Dubuque, Dubuque, Iowa.

EXHIBIT R.

$9,000. DUBUQUE, IOWA, *May* 13, 1887.

Three months after date I promise to pay to the order of L. C. Graves, with 8% int., nine thousand dollars, at Com'l Nat'l bank, value received.

J. K. GRAVES.

(Indorsed:) L. C. Graves.

EXHIBIT S.

$5,000. DUBUQUE, IOWA, *July* 9, 1887.

Four months after date I promise to pay to the order of the Com'l Nat'l bank five thousand dollars, at the Commercial National Bank of Dubuque, value received, with interest at 8 per cent. per annum.

If this note is not paid at maturity the undersigned agree- to pay expenses of collection, including attorneys' fees.

Life ins. policy # 214,399, Mut'l L. I. Co. of N. Y., $10,000.

R. E. GRAVES.

(Indorsed:) The Com'l Nat'l bank, by John R. Waller, president.

EXHIBIT T.

$5,000. DUBUQUE, IOWA, *July* 6, 1887.

Three months after date I promise to pay to the order of myself ($25,000 Am. Coal Co. stock as col.) five thousand dollars, at the Commercial National Bank of Dubuque, value received, with interest at 8 per cent. per annum after date.

If this note is not paid at maturity the undersigned agree- to pay expenses of collection, including attorneys' fees.

J. K. GRAVES.

(Indorsed:) J. K. Graves.

209 EXHIBIT V.

$1,041.73. DUBUQUE, IOWA, *Nov. 28th*, 1884.

Three months after date I promise to pay to the order of Rob't McArthur ten hundred and forty one $\frac{73}{100}$ dollars, at the Commercial National Bank of Dubuque, value received, with interest at 8 per cent. per annum after date.

If this note is not paid at maturity the undersigned agree- to pay expenses of collection, including attorneys' fees.

J. K. GRAVES.

Due M'ch 3.

[On the margin:] Commercial National bank.

(Indorsed:) Pay Commercial Nat'l bank, Dubuque, or order.

EXHIBIT W.

$349.46. DUBUQUE, *Apr.* 1, 1884.

Memorandum check.

For int. on book loan to date, 349.46 dollars.
Charge.

J. K. GRAVES,
By G.

(On face is stamped:) Commercial National bank, Dubuque. Paid Apr. 1, 1884.

EXHIBIT Y.

DUBUQUE, IOWA, *May* 10, 1886.

R. E. Graves having sold to C. H. Booth $35,000 of the capital stock of the Commercial National Bank of Dubuque at 20 % premium, it is hereby mutually agreed between said parties:

1st. That with reference to the future management of the affairs of said bank respecting the large loans heretofore made by it, that while mutually aiming to collect and reduce said loans it will not be the aim to cripple or destroy any corporation, individual, or industry, but to promote such interests, so far as good judgment and safety may warrant.

2nd. It is understood that the premium value of said stock is as yet undecided and may so remain until about July 1st, 1887, when the board of directors of said bank shall fix and determine what the actual premiam was May 10th, 1886, on the stock of said bank, and whatever percentage of such premium in excess of the 20 % now paid by said Booth may be found fairly due on the stock (now sold by said Graves) shall be paid by said Booth to said Graves or order, with 7 % interest from this date, while on the other hand if the said board of directors should then determine that the premium value of said stock this 10th day of May, 1886, was not 20 %, then said Graves shall refund to said Booth or order such excess of premium so paid, with 7 % interest from this date.

In determining the premium value of said stock as of this date the said board of directors in their computation shall treat all loans and securities secured by collateral, endorsement, or otherwise to warrant the reasonable conclusion that the same will be ultimately paid as par assets.

210 3rd. It is agreed that said Booth is to name four directors of said bank, and that said Graves will cause their immediate election thereto.

It is understood that no account is to be taken of the good will and business of said bank in fixing the value of said stock.

R. E. GRAVES.
C. H. BOOTH.

EXHIBIT 1.

Discount Register, Commercial National Bank.

Article No. —.

Discount record page.	When discounted.	No.	Promissor.	Endorser.	Where payable.	Discounted for—	Date of note.	When due.	Time to run.	Amount of note.	Discount.	Net amount.	
D. 283	April 12 1885.	12422	Io. City G. L't Co.....	J. K. Graves.....	.....	J. K. G	Ap. 1	Aug. 4	4 | 3	5,721 67	152 20	5,569 47	R.
258	Dec. 15 1886.	11381	Iowa City Gas L't Co.....	"	.....	J. K. G.....	Nov. 20	M'ch 23	4 | 3	5,136 67	136 67	5,000	P'd Feb. 2, '86.
263	M'ch 23	11594	Iowa City Gas L't Co.....	J. K. Graves.....	.....	J. K. G.....	M'ch 23	July 26	4 | 3	5,277 05	140 38	5,136 67	Paid July 26, '86.
270	July 27	11889	Io. City Gas L't Co.....	J. K. Graves...	.....	J. K. G.....	July 26	Nov. 29	4 | 3	5,421 30	144 25	5,297 05	Paid Dec. 11, '86.
276	Dec'r — 1887.	12162	Io. City Gas L't Co.....	Do.	.....	"	Nov. 29	May 1	4 | 3	5,569 47	148 17	5,421 30	Paid Apr. 7, '87.
288	July 22	12662	L. D. Randall.....	Ctf. No. 1, $10,000, L. D. R. & Co. Co. st'k as coll'l.	.....	L. D. R.....	July 7	Nov. 10	4 | 3	5,136 67	136 67	5,000	Paid Nov. 12, '87.
293	Oct. 31	12899	L. D. Randall.....	St'k L. D. R. & Co. Co., c't f No. 1, 10,000, as coll'l.	.....	L. D. R. & Co. Co'y...	Nov. 9	M'ch 13	4 | 3	5,136 67	136 67	5,000	R., p'd Feb. 16, '88.
283	Ap'l 12	12414	L. D. Randall & Co.....	L. D. Randall.....	.....	L. D. R. & Co. Co.....	Apr. 9	Aug. 12	4 | 3	5,136 67	136 67	5,000	R., paid Ap'l 12, '87.
292	Oct. 17 1887.	12824	L. D. Randall & Co. Co'y.	John Thompson & L. D. Randall.	.....	L. D. R. & Co. Co'y..	Aug. 12	Dec. 15	4 | 3	5,136 67	136 67	5,000	R., p'd Dec. 19, '87.
283	Ap. 12	12421	L. D. Randall & Co.....	L. D. Randall.....	.....	L. D. R. & Co.....	Ap'l 6	Aug. 9	4 | 3	5,136 67	136 67	5,000	R., p'd Oct. 10, '87.
292	Oct. 17	12823	L. D. Randall & Co. Co'y.	John Thompson & L. D. Randall.	.....	L. D. R. & Co. Co.....	Aug. 12	Dec. 15	4 | 3	5,136 67	136 67	5,000	R., p'd Nov. 23, '87.
281	M'ch 21	12361	L. D. Randall & Co.....	L. D. Randall.....	.....	L. D. R. & Co.....	M'ch 14	July 17	4 | 3	5,136 67	136 67	5,000	R., p'd July 18, '87.
288	July 23	12677	L. D. Randall & Co.....	L. D. Randall.....	.....	L. D. R. & Co.....	July 16	Nov. 19	4 | 3	5,136 67	136 67	5,000	R., p'd Dec. 1, '87.
295	Dec. 17	12946	L. D. Randall & Co.....	L. D. Randall, John Thompson.	.....	L. D. R. & Co.....	Nov. 19	M'ch 22	4 | 3	5,136 67	136 67	5,000	R., p'd Jan. 9, '88.
212 281	1887. March 21	12362	L. D. Randall & Co.....	L. D. Randall.....	.....	L. D. R. & Co.....	M'ch 14	July 17	4 | 3	3,082	82	3,000	R., p'd M'ch 24, '87.
288	July 11	12676	L. D. Randall & Co.....	L. D. Randall.....	.....	L. D. R. & Co.....	July 16	Nov. 19	4 | 3	3,082	82	3,000	R., p'd July 26, '87.

EXHIBIT W.

$349.46. DUBUQUE, *Apr.* 1, 1884.

Memorandum check.

For int. on book loan to date, 349.46 dollars.
Charge.

J. K. GRAVES,
By G.

(On face is stamped:) Commercial National bank, Dubuque. Paid Apr. 1, 1884.

EXHIBIT Y.

DUBUQUE, IOWA, *May* 10, 1886.

R. E. Graves having sold to C. H. Booth $35,000 of the capital stock of the Commercial National Bank of Dubuque at 20 % premium, it is hereby mutually agreed between said parties:

1st. That with reference to the future management of the affairs of said bank respecting the large loans heretofore made by it, that while mutually aiming to collect and reduce said loans it will not be the aim to cripple or destroy any corporation, individual, or industry, but to promote such interests, so far as good judgment and safety may warrant.

2nd. It is understood that the premium value of said stock is as yet undecided and may so remain until about July 1st, 1887, when the board of directors of said bank shall fix and determine what the actual premiam was May 10th, 1886, on the stock of said bank, and whatever percentage of such premium in excess of the 20 % now paid by said Booth may be found fairly due on the stock (now sold by said Graves) shall be paid by said Booth to said Graves or order, with 7 % interest from this date, while on the other hand if the said board of directors should then determine that the premium value of said stock this 10th day of May, 1886, was not 20 %, then said Graves shall refund to said Booth or order such excess of premium so paid, with 7 % interest from this date.

In determining the premium value of said stock as of this date the said board of directors in their computation shall treat all loans and securities secured by collateral, endorsement, or otherwise to warrant the reasonable conclusion that the same will be ultimately paid as par assets.

210 3rd. It is agreed that said Booth is to name four directors of said bank, and that said Graves will cause their immediate election thereto.

It is understood that no account is to be taken of the good will and business of said bank in fixing the value of said stock.

R. E. GRAVES.
C. H. BOOTH.

EXHIBIT 1.

Discount Register, Commercial National Bank.

Article No. —.

Discount record page.	When discounted.	No.	Promissor.	Endorser.	Where payable.	Discounted for—	Date of note.	When due.	Time to run.	Amount of note.	Discount.	Net amount.	
D. 283	April 12 1885.	12422	Io. City G. L't Co.....	J. K. Graves.....	.....	J. K. G	Ap. 1	Aug. 4	4 | 3	5,721 67	152 20	5,569 47	R.
258	Dec. 15 1886.	11381	Iowa City Gas L't Co.....	"	.....	J. K. G.....	Nov. 20	M'ch 23	4 | 3	5,136 67	136 67	5,000	P'd Feb. 2, '86.
263	M'ch 23	11594	Iowa City Gas L't Co.....	J. K. Graves.....	.....	J. K. G.....	M'ch 23	July 26	4 | 3	5,277 05	140 38	5,136 67	Paid July 26, '86.
270	July 27	11889	Io. City Gas L't Co.....	J. K. Graves.....	.....	J. K. G.....	July 26	Nov. 29	4 | 3	5,421 30	144 25	5,297 05	Paid Dec. 11, '86.
276	Dec'r — 1887.	12162	Io. City Gas L't Co.....	Do.	.....	"	Nov. 29	May 1	4 | 3	5,569 47	148 17	5,421 30	Paid Apr. 7, '87.
288	July 23	12662	L. D. Randall.....	Ctf. No. 1, $10,000, L. D. R. & Co. Co. st'k as coll'l.	.....	L. D. R.....	July 7	Nov. 10	4 | 3	5,136 67	136 67	5,000	Paid Nov. 12, '87.
293	Oct. 31	12899	L. D. Randall.....	St'k L. D. R. & Co. Co., c't f No. 1, 10,000, as coll'l.	.....	L. D. R. & Co. Co'y...	Nov. 9	M'ch 13	4 | 3	5,136 67	136 67	5,000	R., p'd Feb. 16, '88.
283	Ap'l 12	12414	L. D. Randall & Co.....	L. D. Randall.....	.....	L. D. R. & Co. Co.....	Apr. 9	Aug. 12	4 | 3	5,136 67	136 67	5,000	R., paid Ap'l 12, '87.
292	Oct. 17 1887.	12824	L. D. Randall & Co. Co'y.	John Thompson & L. D. Randall.	.....	L. D. R. & Co. Co'y..	Aug. 12	Dec. 15	4 | 3	5,136 67	136 67	5,000	R., p'd Dec. 19, '87.
283	Ap. 12	12421	L. D. Randall & Co.....	L. D. Randall.....	.....	L. D. R. & Co.....	Ap'l 6	Aug. 9	4 | 3	5,136 67	136 67	5,000	R., p'd Oct. 10, '87.
292	Oct. 17	12823	L. D. Randall & Co. Co'y.	John Thompson & L. D. Randall.	.....	L. D. R. & Co. Co.....	Aug. 12	Dec. 15	4 | 3	5,136 67	136 67	5,000	R., p'd Nov. 23, '87.
281	M'ch 21	12361	L. D. Randall & Co.....	L. D. Randall.....	.....	L. D. R. & Co.....	M'ch 14	July 17	4 | 3	5,136 67	136 67	5,000	R., p'd July 18, '87.
288	July 23	12677	L. D. Randall & Co.....	L. D. Randall.....	.....	L. D. R. & Co.....	July 16	Nov. 19	4 | 3	5,136 67	136 67	5,000	R., p'd Dec. 1, '87.
295	Dec. 17 1887.	12946	L. D. Randall & Co.....	L. D. Randall, John Thompson.	.....	L. D. R. & Co.....	Nov. 19	M'ch 22	4 | 3	5,136 67	136 67	5,000	R., p'd Jan. 9, '88.
212 281	March 21	12362	L. D. Randall & Co.....	L. D. Randall.....	.....	L. D. R. & Co.....	M'ch 14	July 17	4 | 3	3,082	82	3,000	R., p'd M'ch 24, '87.
288	July 11	12676	L. D. Randall & Co.....	L. D. Randall.....	.....	L. D. R. & Co.....	July 16	Nov. 19	4 | 3	3,082	82	3,000	R., p'd July 26, '87.

Exhibit 1—Continued.

Discount record page.	When discounted.	No.	Promissor.	Endorser.	Where payable.	Discounted for—	Date of note.	When due.	Time to run.	Amount of note.	Discount.	Net amount.	
294	Dec. 12	12924	L. D. Randall & Co. Co....	John Thompson, L. D. Randall.	.....	L. D. R. & Co. Co.....	Nov. 19	M'ch 12	4 | 3	3,082	82	3,000	R., p'd Ap. 3, '82.
286	May 23	12551	L. D. Randall & Co.....	L. D. Randall.....	.....	L. D. R. & Co.....	May 13	Sept. 16	4 | 3	5,136 67	136 67	5,000	R., p'd Sept. 16, '87.
292	Oct. 17	12822	L. D. Randall & Co. Co'y.	John Thompson, L. D. Randall.	.....	L. D. R. & Co. Co.....	Sept. 16	Jan'y 19	4 | 3	5,136 67	136 67	5,000	R., p'd Jan. 19, '88.
288	July 23	12665	C. H. Booth.....	$5,000, I. L. & L. Co. stock as coll'l.	.....	C. H. B.....	July 9	Jan. 12,'88	6 | 3	4,266 73	266 73	4,100	P'd Jan'y 7,'88.
288	"	12666	" .... "	50 shares bridge stock as coll'l.	....	" ..... "	" "	Nov. 12 Oct. 12	4 | 3 3 | 3	4,006 60 4,082 67	106 60 82 67	3,900 4,000	Paid Nov. 12, '87. P'd Oct. 12,'87.
288	"	12667	"	$5,000 note as coll'l	.....	"	"	Dec. 12	5 | 3	3,102	102	3,000	" Dec. 12,'87.
278	Feb. 7	12246	J. K. Graves	J. K. Graves.....	.....	J. K. G.....	Jan. 23	May 26	4 | 3	4,126 73	109 76	4,016 97	R., p'd May 28, '87.
279	Mar. 10	12322	L. C. Graves.....	"	.....	"	Feb. 26	Jan. 29	4 | 3	10,842 57	288 47	10,554 10	R., p'd July 6, '87.
286	Jun- 6	12577	J. K. Graves	Robert McArthur.....	.....	R. McA.....	May 24	Sept. 27	4 | 3	1,302 03	34 63	1,267 40	R., June 23,'87.
286	"	12576	J. K. Graves	J. K. Graves.....	.....	J. K. G.....	May 26	Sept. 29	4 | 3	4,239 50	112 77	4,126 73	R.

213 EXHIBIT 1—Continued.

Page 580 of the General Journal No. 6, under date of April 12, shows No. 12414, for $5,136.67, was rediscounted.

Page 564 of General Journal 6 shows that No. 12362, for $3,082, was rediscounted on March 24, 1887.

EXHIBIT 2.

(Page 234.)

JAN'Y 18, 1886.

Meeting to qualify.

Present: L. D. Randall, J. K. Graves, J. H. Thompson, R. E. Graves, who qualified and proceeded to elect a director to make up five, as required by law, and in conformity with stockholders' action.

On motion, C. H. Harris (having purchased 10 shares of stock at 150) was unanimously elected a director, who qualified and took his seat in the board.

On motion, R. E. Graves was elected president for one year.

No further business coming before the meeting, adjourned.

R. E. GRAVES, *Pr.*

Oath- of R. E. Graves, J. H. Thompson, L. D. Randall, J. K. Graves, C. H. Harris, before T. R. Board, notary public, dated Jan'y 18, '86, mailed H. W. Cannon, compt., Jan'y 18, '86.

EXHIBIT 2.

(Page 238 of Record.)

TUESDAY, *June 1st*, 1886.

Present: L. D. Randal-, J. K. Graves, J. H. Thompson, R. E. Graves, and C. H. Harris. The full board convened to increase the board of directors to 7, as provided at the meeting of stockholders January 12th, in conformity with the national currency act.

Negotiations through the medium of J. K. Graves, on the suggestion of H. L. Stout and Wm. Andrew and on the assurance of the latter that himself and Mr. Stout, as stated to the board by J. K. Graves, will take up some of the larger loans now being carried by the bank, putting in money up to $200,000 if necessary, it being deemed advisable by every present member of the board; the president reported the eastern stockholders had all been advised to sell their stock, and he, as the result of these negotiations, sold to C. H.

214 Booth $35,500 of stock in this bank at $120 per share, the actual premium value of each share to be decided and settled as of May 10, 1886, July 1, 1887. It was further agreed that C. H. Booth, F. D. Stout, Wm. Andrew, and John R. Waller shall become members of the board, and the board may be further increased by action of stockholders at a special meeting.

Mr. J. H. Thompson, having negotiated the sale of his stock, which would disqualify him, requested that Mr. C. H. Booth be

elected as his successor, to take effect when the transfer of the stock is made, and C. H. Harris, under the same circumstances, asked that F. D. Stout be elected a director in lieu of himself.

On motion of L. D. Randall, seconded by J. K. Graves, said action was approved, and the secretary was authorized to cast the ballot of the entire board for the election of Wm. Andrew, John R. Waller, C. H. Booth, and F. D. Stout for directors, making the full board seven, as contemplated at the stockholders' meeting. Carried.

On motion of J. H. Thompson, C. H. Booth was unanimously elected vice-president, and the secretary was directed to notify the four new members of their election and General Booth of his election as vice-president.

Loans No. 11745 to 11791 read and, upon motion of L. D. Randall, seconded by J. H. Thompson, approved.

No further business. Adjournment.

C. H. HARRIS, *Sec'y.*

R. E. GRAVES, *President.*

215 239.

JUNE 14, 1886.

Present: J. K. Graves, C. H. Booth, Wm. Andrew, F. D. Stout, L. D. Randall, John R. Waller, and R. E. Graves—full board.

Statement of the Condition of the Bank this a. m., Read by the President, with Following Showing.

Loans	$508,673 69
Deposits	531,773 46
Cash and exch	93,691 85

being $14,000 in excess of legal requir-ments.

Loans No. 11792 to 11810 read, and upon motion of John R. Waller, seconded by Wm. Andrew, approved.

No further business. Adjournment.

C. H. HARRIS, *Sec't'y.*

R. E. GRAVES, *Pr.*

240.

MONDAY, *July* 26, 1886.

Present: R. E. Graves, C. H. Booth, J. R. Waller, J. K. Graves, Wm. Andrew, L. D. Randall.

F. D. Stout absent from the city.

Statement read as per statement book.

Loans No. 11854 to 11880 approved upon motion of J. R. Waller, seconded by Wm. Andrew.

Mr. Waller moved that the president appoint a committee of three, with Mr. Booth as chairman, to examine the books and report at next meeting all loans in bank in excess of $1,000; 2nd by Mr. Andrew.

The president appointed Gen'l Booth and Mr. Waller to act as such committee.

Mr. Booth suggested that the president be added to the committee; assented to without action.

Adjourned.

C. H. HARRIS, *Sec'y.*

R. E. GRAVES, *Pr.*

241.

DUBUQUE, *August 2nd*, 1886.

To the directors of the Commercial National Bank of Dubuque:

GENTLEMEN: The committee appointed by you at your last meeting to examine the books and securities of the bank have attended to that duty and would respectfully report as follows:

The account- as shown by the general balance books were compared with the ledger accounts and found to agree.

The cash was counted and found to agree with the ledger balance.

The loans, suspended loans, stocks and bonds, and stock and bonds of the investment account were all listed and found to agree with the ledger balances.

The following is a lsist of the loans made by the bank to 216 individuals and firms in excess of $1,000.

(NOTE.)—Here follows forty names of individuals and firms, and such loans amount to $293,884.39.

The following is a list of the past-due paper where the amounts are loaned to parties whose names appear in the list just read. It has been included in that list.

(NOTE.)—Here follows 18 names of parties, and such loans amount to $23,550.09.

The following is a list of the demand paper. The amounts where the names appear in the first list were included in that list.

(NOTE.)—Here follows 17 names, and in all amounts to $105,599.48.

The investment account is made up of the following items:

Bonds of the Iowa iron works, guaranteed by J. K. Graves	$60,000	
Other bonds and stocks listed below, guaranteed by J. K. Graves, with 8 per cent. interest, and taken for	28,689 82	
		88,689 82
Iowa Iron Works Co. stock	18,500	
Oskaloosa Power and Land Co.	7,500	
Capital Insurance Co. of Des Moines	2,000	
Old M. C. Spring Imp. Co. stock	7,200	
Northwestern Sash and Door Co. stock, pref.	10,000	
Northwestern Sash and Door Co. stock, common	10,000	
Consumers' Steam Heating Co. stock	23,000	
Gladstone Refining Co. bonds	3,000	
Old M. C. Spring Imp. Co. bonds	1,500	
American Coal Co. bonds	4,000	
		$86,700

Stocks and Bonds.

Amount in all $80,250

Suspended Loans.

The following list of notes is carried in the books as suspended loans for $26,184.26.

(NOTE.)—Here follows list of 21 items, amount- in all to $35,965.51.

The following items are found in the cash.

(NOTE.)—Here follows list of 19 items, amounting in all to $5,228.25.

The following is a list of overdrafts.

(NOTE.)—Here follows 20 items, amounting in all to $59,734.94.

The report shows that the bank is in no condition to meet the increased business which the moving of the fall crops should bring to it. The largest portion of its funds have been loaned to five or six individuals or corporations, some of which have apparently got their finances into such a condition it is difficult for them to reduce their indebtedness. Not only have the funds of depositors and stockholders been tied up in this manner, but we have borrowed from our own citizens the sum of $11,400, rediscounted bills to the amount of $9,698.62, and borrowed on certificates of deposit from eastern banks to the amount of $60,000. Besides the loans that are tied up we are carrying as assets in the suspended loans a large amount of paper that is worthless and on which the bank cannot depend on realizing anything. In order to get back onto a sound business footing, it will be necessary to reduce all loans that are being carried in excess of a reasonable amount, and to increase the cash of the bank by collecting all outstanding amounts that can be collected.

We would recommend that it be made the duty of the president or cashier to make written reports to the board at all regular
217 meetings of all past-due paper, all demand paper, all suspended paper, all items carried in the cash, excepting the ordinary bill- of the bank and regular business checks on the other city banks.

We would further recommend that all demand paper be put on a definite time basis as speedily as possible, and that all overdrafts that had been carried as loans be either paid or put in better business shape.

In order to give these matters such further consideration as the condition of the affairs seem to call for, your committee would suggest the appointment of a committee of four, including the president, who shall be chairman, to take into consideration the condition of the bank and made such suggestions *as* to the board from time to time as the case may seem to warrant.

Respectfully submitted.

C. H. BOOTH.
JOHN R. WALLER.

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WEDNESDAY, *August* 11, 1886.

Adjourned meeting from August 9th, 1886.

Present: C. H. Booth, J. R. Waller, J. K. Graves, Wm. Andrew, and L. D. Randall.

R. E. Graves and F. D. Stout absent from the city.

Vice-President Booth in the chair.

Minutes of the last meeting read and upon motion of Mr. Waller approved.

Statement of condition of the bank read as per statement book.

Loans No. 11880 to 11902, inclusive, read and approved upon motion of Mr. Waller, seconded by Wm. Andrew.

Vice-P't Booth stated that the examining committee appointed two weeks previous was ready with its report and produced same, handing it to Mr. Waller, who read it. Mr. J. K. Graves moved that the report be received and filed; seconded by Mr. Randall. Carried.

Mr. Randall then moved that the recommendation of the committee to appoint a standing committee of four be carried out, as well as the other recommendation made, and that the permanent committee be now appointed; seconded by Mr. Andrew Carried.

The chair stating that as *these* committee was a very imp-rtant one he would request that the names of the gentlemen to compose it be offered in a motion suggesting that Mr. J. K. Graves be named as one.

Mr. Randall moved that the committee be made to consist of P't R. E. Graves, chairman; Vice-President C. H. Booth, Mr. J. K. Graves, and Mr. John R. Waller; seconded by Wm. Andrew.

Motion put by Mr. Wm. Andrew and carried.

No further business. Adjourned on motion of Mr. Randall.

C. H. HARRIS, *Sec't'y.*

218 Page 245.

NOVEMBER 15, 1886.

Present: Vice-P't C. H. Booth, Wm. Andrew, L. D. Randall, J. K. Graves, and R. E. Graves. Records of last meeting read and approved.

The following was adopted upon motion of Mr. Booth, seconded by Mr. Randall: "Whereas in the course of business of this bank with the U. S. Treas'r and subtreasurers it is occasionally necessary that the president or vice-president endorse drafts on these officers or offices to our regular correspondents for the credit of this bank; and whereas it is the opinion of the First Comptroller of the Treasury Department that no power to indorse such drafts belongs by virtue of his office to the president, vice-president, or ass't cashier of a State or national bank; therefore—

Resolved, That the acts of R. E. Graves, p't, in endorsing certain U. S. Treasury drafts are hereby authorized, and his indorsements or that of C. H. Booth, vice-president, for such purposes in the future is hereby authorized."

The following resolution was also adopted:

Resolved, That the Comptroller of the Currency be, and he is hereby, authorized to withdraw $100,000 U. S. bonds deposited with the Treasurer of the U. S. by this bank to secure its circulation and described as follows: $100,000 of the loan of July 12, 1882, and the Treasurer of the U. S. be, and is hereby, authorized to assign and transfer the same to the Secretary of the Treasury for the redemption on account of the National Bank of the Republic of New York, retaining from the proceeds of such redemption $67,500 for deposits with the Treasurer of the United States to retire a like amount of our outstanding circulation.

Further—

Resolved, That as security for $22,500 minimum circulation as provided by law, the president or cashier is hereby authorized to purchase $25,000 U. S. registered 4½ per cent. bonds through the National Bank of the Republic, N. Y., and that said bank be, and is hereby, authorized to complete the transaction, including the receipt for the withdrawal of the proportionate amount of our 5 per cent. fund with the U. S. Treasurer.

Loan- No. 12076 to 12107, inclusive, approved upon motion of C. H. Booth.

No further business. Adjourned.

C. H. HARRIS, *Sec't'y.*

R. E. GRAVES, *Pr.*

219 261.

MONDAY, *June* 19, 1887.

The president stated that Mr. Stone had gone with the belief that he had the true ideas of the board as to the value of our assets and thought it his duty to write him the facts in the case, as at the opening of the meeting, Mr. S. being present, it was distinctly stated by the president that the object of the meeting was to give Mr. S. the correct value of the asset- of the bank as estimated by the directors, but would first ask the sense of the board. Mr. Booth thought better wait until we heard from the comptroller. Mr. Stout thought important to keep on good terms with the examiner, so better write.

Mr. J. K. Graves thought no necessity for writing. Motion dropped.

C. H. HARRIS, *Sec't'y.*

265.

DUBUQUE, *June* 23, 1887.

To the directors of the Commercial National Bank of Dubuque.

GENTLEMEN: The committee appointed by you to examine the books and securities of the bank have attended to that duty and would respectfully report as follows:

The accounts as shown on the general balance book were compared with the ledger accounts of June 22nd and found to agree. The cash was counted and found to agree with the ledger balance. The loans, suspended loans, stocks and bonds, and stocks and bonds

of the investment account were all listed and found to agree with the ledger balances.

* * * * * * *

The investment account is made up of the following items:

Iowa Iron Works Co. bonds		$60,000 00
Other bonds and stocks listed below and held as security for		15,449 82
Iowa Iron Works Co.	18,500	
Oskaloosa Power and Land Co.	7,500	
Capital Ins. Co. of Des Moines	2,000	
Northwestern Sash & Door Co., st'k pref.	10,000	
Northwestern Sash & Door —, st'k com.	10,000	
Gladstone Refining Co. bonds	3,000	
Old M. C. Spring Imp. Co. bonds	1,500	
American Coal Co. bonds	4,000	
	$56,500	

* * * * * * *

JOHN R. WALLER.
J. K. GRAVES.

220 Page 13, Book 2.

Special Meeting of the Board.

SATURDAY, *Feb'y* 11, 1888.

Present: R. E. Graves, J. K. Graves, F. D. Stout, J. R. Waller, Wm. Andrew, L. D. Randall, and C. H. Booth. President Graves in the chair.

Minutes of last meeting read and approved.

Upon motion of Mr. Booth, seconded by Mr. Randall, the following resolution was unanimously adopted:

"Resolved, That the contingent fund of $45,000 be managed by the trustees appointed by the board Jan'y 24th in the same manner and on the same basis identically as the $100,000 fund, and with the same powers and authority."

The secretary read the following communication from the president, Mr. R. E. Graves:

"DUBUQUE, *Feb'y* 11, 1888.

GENTLEMEN: My business engagements are such that I hereby request you to accept my resignation as president of this bank, to take effect at your pleasure, not later than Feb'y 18th. I also tender my resignation as director, with best wishes, etc.

Resp'y, R. E. GRAVES.

To the directors of the Commercial Nat'l bank, Dubuque, Iowa."

Mr. Stout moved that Mr. Graves' resignation as president be taken up first. Carried.

Upon motion of Mr. Booth, seconded by Mr. Stout, board declined to accept resignation as director.

Upon motion of Mr. Stout, seconded by Mr. Andrew, Mr. Graves' resignation as pres't was accepted to take effect at once.

Upon which the following resolution offered by Mr. J. K. Graves was adopted without a dissenting voice:

Resolved, That in accepting the resignation of our president, Mr. R. E. Graves, we bear cheerful testimony to his experience and ability as a banker and to his personal integrity, and our best wishes for his success and prosperity go with him to his new field of labor.

* * * * * * *

C. H. HARRIS, *Sec't'y.*

221 EXHIBIT 3.

The following is the deposition of Lyman J. Gage, with the exception of the formal part of same and certificate of officers taking same:

Deposition of Lyman J. Gage.

Direct examination:

First interrogatory. What is your name, age, occupation, and place of residence?

Answer. My name is Lyman J. Gage; of lawful age; am president of the First National Bank of Chicago, and reside in Chicago, Ill.

Second. State what business or official connection have you had with national banks and how long the same has continued.

Answer. I have served as cashier, vice-president, and president of the First National Bank of Chicago and its predec-ssor of the same name for twenty-four years. I have had no other official connection with national banks.

Third. State, if you know, what is the custom of your bank and other national banks generally as to treating overdrafts by depositors which have been previously arranged for with the banks as loans and including them as such in the reports and statements of amount of loans and discounts.

A. I can state what is the custom of our bank, but do not know what the custom of other national banks is as to the method of treating overdrafts in the way of classifying them. Our own custom is to put into collateral loans, under the head of "Loans and discounts," all overdrafts which have been arranged for between the depositor and the bank upon which collateral security is lodged with bank. In our bank a large amount of business is done with shippers of grain and provisions, where the loans are changing and temporary. It is more convenient to keep track of the advances and the collaterals by an open debit on the books, known as an overdraft, than by taking notes to evidence the debt. All
222 overdrafts made without each previous arrangement are classed and reported to the Government as overdrafts.

Fourth. State what is the general practice among banks as to permitting overdrafts by certain of their customers and how are

such overdrafts treated and reported with reference to their being classed as loans.

A. I do not know the general practice as to the particulars enquired of.

Fifth. Do you know what the general custom or practice is of the national banks as to treating bills of exchange, notes, or other papers signed by one person, but guaranteed by others on separate paper or otherwise as two-name paper in their statement and reports? If so, state what it is.

A. I do not know the general custom or practice. I know what our practice is; it is to treat such paper as "two-name" paper, and I have no doubt such is the general rule.

Sixth. Do you know what the general custom or practice of national banks is as to treating bills, notes, or other paper signed by one person, but secured by collaterals or otherwise as two-name paper on their statements and reports? If so, state what it is.

A. I only know by general inference what the custom or practice is. Our practice would be to classify such paper as secured by collateral.

Seventh. In making classification of loans and discounts into one-name and two-name paper in the statement or reports of national banks, do you know what is the general custom as to the manner of arriving at the respective amounts under such heads or items, whether by the actual examination of the paper itself or the books or by an approximate estimate of the respective amounts thereof? If so, state how.

223 A. I do not know the custom of national banks generally as to the matter enquired of.

Eighth. Do you know R. E. Graves, the defendant in this suit; if so, how long have you known him, and what business relations have you had with him, and do you know what his general character is, where he has resided, and among the people with whom he has been doing business during the time? If so, state.

A. I am acquainted with R. E. Graves, and have been for 25 years or more. During that period he has had relations with this bank as an officer of a bank in Dubuque, and it is in this connection chiefly that I have known him. I do not know what his general reputation is where he has resided. All his transactions with us have been of a proper character and creditable to him.

Cross-examination:

Cross-interrogatory first. Have you ever assisted in preparing the reports of your bank which have been made and forwarded to the Comptroller of the Currency; if so, when and how frequently?

A. I have never directly assisted in preparing the reports, but am acquainted with the manner of preparing them; am often consulted with and always review them.

Second. When and in what reports to the Comptroller of the Currency have your bank included "overdrafts" in the item of "loans and discounts"? Answer fully.

A. In all our reports to the Comptroller of the Currency our bank has included a portion of overdrafts in the item of "loans and discounts."

Third. Do you keep in your bank a copy of the reports you made and forwarded to the Comptroller of the Currency?

A. We keep an exact copy of the reports we make.

224 Fourth. Will you please produce before the notary public and have attached to your deposition a copy of one of your said reports in which you included "overdrafts" in the item of "loans and discounts"?

A. I here produce and ask the notary to attach to my deposition as Exhibit "A" a copy of our last report of September 30, 1892, to the Comptroller of the Currency, showing so much of said report as relates to the matters of loans and discounts and overdrafts.

Fifth. Have you so produced a copy of said report?

A. I have produced a copy of said report in so far as it relates to the items called for.

Sixth. Please state what overdrafts are included in the item of "loans and discounts" in said last-mentioned report, and in answering this question I wish you would mention the amount of each overdraft so included, and the name of the person, company, or corporation who had such overdraft.

A. The report shows by a memorandum written across the blank under the head of "Overdrafts" the following: "Included in bills discounted is the sum of $435,608.60 representing advances made in open accounts on cash collateral." It further shows a report as temporary overdrafts of $2,628.31. The amount of $435,608.60 is covered in the report under the head "On demand, secured by stocks, bonds, or other personal securities."

I decline to mention the amount of each overdraft and the name of the person, company, or corporation who had made such overdrafts or to whom we had made such advances on open account, for the reason that it would disclose unnecessarily the private affairs of individuals nowise interested in or connected with this litigation who have the right, as I understand it, to expect us not to make such a disclosure.

Seventh. Have you fully answered the last cross-interrogatory; and, if not, will you now do so?

A. I have answered it as fully as I deem it my proper

225 duty, and as fully as this investigation seems to require.

Eighth. Do the individual balance books of your bank show the condition of the account from day to day of each person, firm, and corporation doing business with your bank?

A. Yes, sir.

Ninth. If any of said accounts are overdrawn, does not the amount so overdrawn appear on the individual balance book of the bank or some other book of the bank showing the amount so overdrawn at the close of each day's business, and does not said overdraft appear in "red ink" on said balance book? Please answer explicitly.

A. Yes, sir.

Tenth. If in answer to direct interrogatory No. 3 you sh-d say that it is the custom of your bank to include overdrafts which had been previously arranged for in your reports to the Comptroller of the Currency as loans, will you please state in which item of the schedule of loans and discounts (see back of report) you include said "overdrafts"?

A. I have already stated that such items are covered in the head of loans and discounts in the second item of the schedule against the words "on demand, secured by stocks, bonds, and other personal securities."

Eleventh. Do you wish to be understood as saying where no note or written agreement of any kind has been given by the customer to your bank that you permit him to overdraw his account, and then when called upon by the Comptroller of the Currency for a report of the condition of your bank that you report such overdraft in the item of "loans and discounts" (see schedule), and that you do not report it as an overdraft?

A. The answers already given to this enquiry show fully how the report to the Comptroller of the Currency in cases of the
226 kind to which this enquiry relates is made. While we show them in the first instance not as overdrafts, but as loans, we put an explanatory note by which the comptroller is apprised of just how the advances are carried on our books.

Twelfth. If in answer to direct interrogatory No. 4 you say that it is the general practice among banks to permit overdrafts by certain of their customers and to report such overdrafts as loans, will you please state the names and location of any and all banks which you know to be given to such practice and state fully the information which you have as to such practice by other banks and how you obtained such information? State fully.

A. I am not acquainted with the general practice and cannot make answer to this inquiry.

Thirteenth. Is it not a fact that on the back of the reports required to be made to the Comptroller of the Currency there is a schedule of the loans and discounts, and that the single-name paper without other security is required to be scheduled by itself, and do you not so schedule that class of paper?

A. I answer yes to both questions.

Fourteenth. Is it not a fact that in said schedule there is a place for paper secured by collaterals?

A. Yes.

Fifteenth. Do you mean to say that it is the general custom of banks to treat bills of exchange, notes, or other papers signed by one person and secured by collaterals as two-named paper in their reports to the comptroller, and if you answer that it is will you please state the name of five national bank- that do so?

A. I do not undertake to say what the custom of other banks is. Our own custom is to report paper signed by one person and secured by collateral against one or the other of the items in the schedule of loans and discounts showing "loans secured by collateral" either on demand or ti-e.

227 Sixteenth. Have you given the names of the five national banks as requested in cors-interrogatory No. 14? And, if not, please state why you have not.

A. I have not given the names of any national banks as requested, because I am not sufficiently acquainted with their custom so to do.

Seventeenth. Have you ever heard any person or persons who have ever resided in the city of Dubuque, Iowa, say anything about the character of said R. E. Graves? And, if so, please give the name of such person or persons, and what each of said persons said as to the character of said Graves, and when it was said.

A. It is impossible for me to give the name of any person or persons and what each of them said and when they said it as to the character of R. E. Graves.

Eighteenth. Have you fully answered the last question; and if not, will you do so now?

A. Yes; I have answered.

Nineteenth. Have you received any letters from J. K. Graves in relation to your testimony in this case?

A. No.

Twentieth. If you answer the last question that you have, will you please produce all of said letters or copies of them before the notary who takes your deposition and have them attached to your deposition?

A. Not having any letters from Mr. Graves, I cannot produce them.

228 EXHIBIT 4.

Deposition of John J. P. O'Dell, with the Exception of the Formal Part of the Same and Certificates of Officers Taking Same.

Answer to Int. 1. John J. P. O'Dell; lawful age; president of the Union National bank.

A. to Int. 2. I have been connected with the Union National bank since 1886 in various positions, including book-keeper, teller, cashier, vice-president, and president.

A. to Int. 3. The custom of the bank with which I am connected is to include overdrafts which have been previously arranged for and which are secured by collaterals in the reports and statements furnished to the comptroller among the loans and discounts. I am not acquainted with the general practice among other national banks.

A. to Int. 4. I cannot state what the general practice among other banks is.

Answers to Cross-interrogatories.

1. I have not for some time assi-ted in preparing the reports of our bank which have been made and forwarded to the comptroller, although I almost invariably review such reports.
2. I decline to answer.
3. Yes.
4. For the reason that it does not seem proper for me to disclose

the business of the bank with which I am connected, I shall be obliged to decline to produce any copies of reports.

5. I have not.

6. For the reason set forth in my answer to cross-interrogatory 4 I must decline to answer.

7. I cannot answer further.

8. Yes.

9. Yes.

229 10. Such overdrafts are included in the item classified as "on demand, secured by stocks, bonds, and other personal securities."

11. I wish to be understood that where no notes or written agreement had been given by the customer to the bank and an overdraft is permitted, and such overdraft is changing from day to day and is secured by collateral, that it is our custom to report such overdrafts in the item of loans and discounts under the subdivision of "demand-secured loans" when making a report to the Comptroller of the Currency.

12. I did not state in answer to direct interrogatory 4 that I was aware of the general practice among banks in relation to overdrafts.

JOHN J. P. O'DELL.

230 EXHIBIT 5.

Deposition of Charles A. Folsom, with Exception of Formal Part of Same and Certificate of Officer Taking Same.

Direct testimony:

Int. 1st. What is your name, age, occupation, and place of residence.

Ans. to 1st Int. Charles A. Folsom; 56 years; accountant; 226 East Forty-first street, Chicago, Illinois.

Int. 2nd. State what business of official connection you have had with national banks and how long the same has continued.

Ans. to Int. 2. I have been an assistant to the bank examiners in the examination of national banks for sixteen years, and have also during that period examined national banks on contracts with the directors and officers of the national banks.

Int. 3rd. State, if you know, what is the custom of your bank and other national banks generally as to treating overdrafts be depositors which have been previously arranged for with the banks as loans and including them as such in the amount of loans and discounts in the reports and statements to the comptroller.

Ans. to Int. 3rd. As such examiner I have found the general custom of national banks has been to treat overdrafts made by depositors who had previously arranged therefor as loans and discounts and included the same in the amount of loans and discounts in their reports and statements.

Int. 4. State what is the general practice among banks as to permitting overdrafts by certain of their customers, and how are

such overdrafts treated and reported with reference to there being classed as loans?

Ans. to Int. 4. The general practice among banks is to permit overdrafts when arranged for by their customers, and such overdrafts are treated and reported as loans and discounts.

231 *Cross-interrogatories & Answers.*

Cross-int. 1. Have you ever assisted in preparing the reports of your bank which have been made and forwarded to the Comptroller of the Currency; and, if so, when and how frequently?

Ans. to cross-int. 1. I have assisted in preparing the reports of the bank examiners which we made and forwarded to the Comptroller of the Currency actively during the last sixteen years.

Cross-int. 2. When and in what reports to the Comptroller of the Currency has your bank included "overdrafts" in the item of "loans and discounts"?

Ans. to cross-int. 2. My experience as an examiner of national banks has been that overdrafts arranged for are always included in the item of loans and discounts.

Cross-int. 3. Do you keep in your bank a copy of the reports you make and forward to the Comptroller of the Currency?

Ans. to cross-int. 3. Copies are retained of the reports made and forwarded to the Comptroller of the Currency.

Cross-int. 4. Will you please produce before the notary public and have attached to your deposition a copy of one of your said reports in which you included "overdrafts" in the item of loans and discounts?

Ans. to cross-int. 4. I could produce copies of such reports, but do not consider myself privileged to do so.

Cross-int. 5. Have you so produced a copy of said report?

Ans. to cross-int. 5. I am not privileged to produce a copy of said or any reports.

Cross-int. 6. Please state what overdrafts are included in the item of "loans and discounts" in said last-mentioned report, and in answering this question I wish you to mention the amount of each overdraft so included and the name of the person, company, or corporation who had such overdraft.

232 Ans. to cross-int. 6. I have already answered that overdrafts previously arranged for are always included in the item of "loans and discounts."

Cross-int. 7. Have you fully answered the last cross-interrogatory; and, if not, will you now do so?

Ans. to cross-int. 7. I have.

Cross-int. 8. Do the individual balance books of your bank show the condition of the account from day to day of each person, firm, or corporation doing business with your bank?

Ans. to cross-int. 8. The individual balance books of the national banks show the condition of the depositors' account daily.

Cross-int. 9. If any of the accounts are overdrawn, does not the amount so overdrawn appear on the individual balance book of the

bank or some other book of the bank, showing the amount so overdrawn at the close of each day's business, and does not said overdraft appear in "red ink" on said balance book? Please answer explicitly.

Ans. to cross-int. 9. Yes.

Cross-int. 10. If in answer to direct interrogatory No. 3 you should say that it is the custom of your bank to include overdrafts which have been previously arranged for in your reports to the Comptroller of the Currency as loans, will you please state in -hich item of the schedule of loans and discounts (see back of report) you include said "overdrafts"?

Ans. to cross-int. 10. They are included in loans and discounts and are classified according to the circumstances.

Cross-int. 11. Do you wish to be understood as saying where no note or written agreement of any kind has been given by the customer to your bank that you permit him to overdraw his account, and then, when called upon by the Comptroller of the Currency for a report of the condition of your bank, that you report such overdrafts in the items of "loans and discounts"
233 (see schedule), and that you do not report it as an overdraft?

Ans. to cross-int. 11. In examining national banks I take the books and ascertain the assets and liabilities therefrom, and report as I find them; overdrafts I report as overdrafts. I am not governed by the report of any bank officer in that bank. In many instances bank officers in making up their reports estimate single, double, and secured paper, but the bank examiner, upon whose report the Comptroller of the Currency relies, in listing the loans, carefully examines the same and reports exactly upon each class of papers accordingly. The bank examiner is not governed by any report made by any bank official and cares nothing for it in classifying papers and examining the bank.

Cross-int. 12. If in answer to direct interrogatory No. 4 you say that it is the general practice among banks to permit overdrafts by certain of their customers and to report such overdrafts as loans, will you please state the names and location of any and all banks which you know to be given to such practice, and state fully the information you have as to such practice by other banks and how you obtained such information? State fully.

Ans. to cross-int. 12. I could readily do so, but do not consider it would be proper.

Cross-int. 13. Have you received any letters from J. K. Graves in relation to your testimony in this case?

Ans. to cross-int. 13. I have not.

Cross-int. 14. If you answer that you have received such letters from J. K. Graves, you will please produce all of said letters before the notary who takes your deposition and have all of said letters, or copies of them, attached to your deposition.

Ans. to cross-int. 14. Having received no letter from J. K. Graves, I am unable to produce them or copies thereof.

234 EXHIBIT 6.

Deposition of John R. Walsh, with Exception of Formal Part of Same and Certificate of Officer Taking Same.

Direct testimony:

1st. What is your name, age, occupation, and place of residence?

A. John R. Walsh; lawful age; president of the Chicago National bank.

2nd. State what business or official connection you have had with national banks, and how long the same has continued.

A. I have been connected with the Chicago National bank for several years.

3rd. State, if you know, what is the custom of your bank and other national banks generally as to treating overdrafts by depositors which have been previously arranged for with the bank as loans and including them as such in the amount of loans and discounts in the reports and statements to the comptroller.

A. The custom of the bank with which I am connected is to include overdrafts which have been previously arranged for and which are secured by collateral in the reports and statements furnished to the comptroller among the loans and discounts. I am not acquainted with the general practice among other national banks.

4th. State what is the general practice among banks as permitting overdrafts by certain of their customers, and how are such overdrafts treated and reported with reference to their being classed as loans.

A. I cannot state what *was* the general practice among other banks is.

235 *Cross-interrogatories.*

1st. Have you ever assisted in preparing the reports of your bank which have been made and forwarded to the Comptroller of the Currency; and, if so, when and how frequently?

A. I have not for some time assisted in preparing the reports of our bank which have been made and forwarded to the Comptroller, although I almost invariably review such reports.

2nd. When and in what reports to the Comptroller of the Currency have your bank included "overdrafts" in the item of "loans and discounts?" Answer fully.

A. I decline to answer.

3rd. Do you keep in your bank a copy of the reports you make and forward to the Comptroller of the Currency?

A. Yes.

4th. Will you please produce before the notary public and have attached to your deposition a copy of one of your said reports in which you included "overdrafts" in the item of "loans and discounts"?

A. For the reason that it does not seem proper for me to disclose the business of the bank with which I am concerned, I shall be obliged to decline to produce any copies of reports.

5th. Have you so produced a copy of said report?

A. I have not.

6th. Please state what overdrafts are included in the item of "loans and discounts" in said last-mentioned report, and in answering this question I wish you to mention the amount of each overdraft so included and the name of the person, company, or corporation who had such overdraft.

A. For the reason set forth in my answer to cross-interrogatory 4, I must decline to answer.

236 7th. Have you fully answered the last cross-interrogatory; and, if not, will you now do so?

A. I cannot answer further.

8th. Do the individual balance books of your bank show the condition of the account from day to day of each person, firm, or corporation doing business with your bank?

A. Yes.

9th. If any of said accounts are overdrawn, does not the amount so overdrawn appear on the individual balance book of the bank or some other book of the bank showing the amount so overdrawn at the close of each day's business, and does not said overdraft appear in "red ink" on said balance book? Please answer explicitly.

A. Yes.

10th. If in answer to direct interrogatory No. 3 you should say that it is the custom of your bank to include overdrafts which have been previously arranged for in your reports to the Comptroller of the Currency as loans, will you please state in which item of the schedule of loans and discounts (see back of report) you include said "overdrafts"?

A. Such overdrafts are included in the item classified as "On demand secured by stocks, bonds, and other personal securities."

11th. Do you wish to be understood as saying where no note or written agreement of any kind has been given by the customer to your bank that you permit him to overdraw his account and then when called upon by the Comptroller of the Currency for a report of the condition of your bank that you report such overdrafts in the item of "loans and discounts" (see schedule), and that you do not report as an overdraft?

A. I wish to be understood that where no note or written agreement has been given by the customer to the bank and an

237 overdraft is permitted and such overdraft is changing from day to day and is secured by collateral that it is our custom to report such overdrafts in the item of loans and discounts under the subdivision of "Demand secured loans" when making a report to the Comptroller of the Currency.

12th. If in answer to direct interrogatory No. 4 you say that it is the general practice among banks to permit overdrafts by certain of their customers and to report such overdrafts as loans, will you

please state the names and location of any and all banks which you know to be given to such practice, and state fully the information you have as to such practice by other banks and how you obtained such information? State fully.

A. I did not state in answer to direct interrogatory No. 4 that I was aware of the general practice among banks in relation to overdrafts.

13th. Have you received any letters from J. K. Graves in relation to your testimony in this case?

A. I have not.

14th. If you answer that you have received such letters from J. K. Graves, you will please produce all of said letters before the notary who takes your deposition and have all of said letters or copies of them attached to your deposition.

A. I have no letters to attach.

238 The following are the instructions and charge of the court to the jury, together with the exceptions and objections thereto and to each and every paragraph thereof then and there made by defendant at the time of giving of such instructions and charge:

UNITED STATES
vs.
RUFUS E. GRAVES.

GENTLEMEN OF THE JURY: I congratulate you that your labors in this case are so nearly ended. And I desire to assure you that the court heartily appreciates your prompt and interested attendance and the careful and constant attention you have given to the evidence as it has been introduced before you during this lengthy trial.

Par. 1. Thus far your conduct has abundantly justified the system of jurisprudence which has as one of its most valued elements the trial by jury. In every civilized land the right of any man charged with crime to a trial by jury is held sacred. In this great nation of ours, this sacred right is assured by the fundamental law of the land, our National Constitution. And I hold it to be as much the duty of a good citizen to serve his country in time of peace, when summoned to act in the capacity of juror, as it is a good citizen's duty to respond to her call when her safety and honor are imperiled by domestic violence, or her flag assailed by a foreign foe. So long as the intelligent citizenship of the nation, with a courage which dares rightly to decide, and an integrity which cannot be cajoled or corrupted from a true verdict, shall constitute the juries of our courts, so long may we confidently expect our courts shall be the protection of innocence and the terror of evil-doers.

In the system of jurisprudence obtaining with us, a trial, in cases like the one now on hearing, has a twofold division, each part having its separate duty to perform. The court is charged with the duty of determining the law governing the case, and of superintending the admission of evidence, upon which the facts involved

are to be decided, while the jury is charged with the duty of deciding the facts as the evidence shall enlighten them. You will thus observe that the jury is a most important arm of the law in the administration of our criminal jurisprudence. And that the efficiency of that jurisprudence depends no less on the faithful and honest action of the jury than upon the honest and intelligent action of the court. Indeed as a general statement it is unquestionably true that with the juries of our country, even in a larger degree than with the judges of our courts, rests the responsibility of determining whether the laws shall be obeyed and their violations punished. The judge, however heartily he may desire the law enforced and crime sent to its deserved punishment, is powerless to convict the criminal, unless the jury shall join in that desire, and return their verdict of guilty when crime has been proven before them. So that the honest jury not only stand as a bulwark against unjust punishment of innocent men, but as well the protection of the nation against freedom to crime, and impunity to criminals. When therefore judge and jury unite in earnestly upholding the law and punishing its violation, honest men are safe, while crime-committers are made to tremble.

Par. 2. By the oaths you have taken, you are bound a true verdict in this case to render, on the evidence introduced before you, applying thereto the law as it shall be given you by the court.

As a jury, you are to be no respector of persons. Whether the defendant has high social standing and influence and wealth, and be entrenched with powerful friends, or possesses none of these desirable conditions, but instead be a man of low degree and acquainted with poverty, he is to receive at your hands the same honest, intelligent, courageous consideration, with reference to the facts proven. See to it, gentlemen, that as you expect to answer at the last great day, when the secrets of all hearts are made known, see to it that your consciences shall discharge you in this case, in the sincere and impartial performance of your duty, from the obligations of the oaths you have taken.

The court is no less bound to impartially administer the law. Every judge of a United States court, as he enters upon his duties is sworn thus to discharge his duties. Let me read to you what that oath is:

"I do solemnly swear that I will administer justice without respect to persons, and do equal justice to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties devolving on me according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States, so help me God."

By this oath the judge is bound to see that justice is administered, and that the right prevails. I can say to you gentlemen, without reservation, that this has been my sole wish and desire in this trial, now so near its close.

The defendant, Rufus E. Graves, stands charged with having violated the law relating to his duty as president and director of a national banking association, viz: the Commercial National Bank

of Dubuque, in that he made certain false entries in certain reports to the Comptroller of the Currency.

In your investigations in this case, bear constantly in mind, gentlemen, that the defendant is not upon trial upon any charge of embezzling or misapplying funds of the bank, nor upon any charge of having by himself or with others plundered or wrecked the bank. And you cannot base your verdict herein upon any other charge than that set forth in the counts of the indictment submitted to you. The indictment confines this trial to the matters of alleged false entries, averred to have been made with intent to defraud or deceive as charged. And whether the defendant did or did not properly manage or direct or assist in managing or directing the general affairs of the bank, and whether or not said bank failed, are matters wholly immaterial in this trial, except in such particulars as may in these instructions be treated upon and applied to the charge of making said false entries, and only so far as the same may be so treated and applied as bearing on the intent of the defendant.

Par. 3. The national banking act is of comparatively recent enactment. The system of national banks grew out of the necessities of our nation during the war of the rebellion. At a period in that terrible and costly war, when the armies of the nation were in the field and its navies rode the waves, when revenue greatly in excess of that coming into the National Treasury became absolutely necessary to the maintenance of our armed forces and of the Government at home and abroad—at a time when the very existence of the nation and the suppression of the armed foes warring upon it and assailing our flag seemed almost to depend on the power of the Government immediately to provide greatly enlarged financial resources, the financial statesmen of the nation devised this plan, which with subsequent amendments has crystal-ized into the present national banking law. I but voice the general sentiment of every man who has carefully investigated the present national banking system, when I state that is one of the best, if not the best, banking system the human intellect has ever devised.

It is rightly called a national banking law. Having its inception in the necessities of the nation, and its foundation in the statutes enacted by the national law-making power, Congress so broadly laid its foundation that it applies and extends to the farthest boundaries of the nation, and yet is at the door of any community desiring to avail itself of the benefits found in the system. And Congress, intending it should be national in extent, has placed it under national, or as the term is sometimes used Federal, charter and Federal supervision. Upon the court of the United States and not upon the courts of the several States, is conferred the duty and power of investigating and punishing crimes or violations of the provisions of this law.

Anticipating that in almost every settled part of the nation these national banking associations would spring up, as their security and desirability should be made manifest, Congress carefully surrounded these associations by every barrier against dishonesty, fraud and corruption which the ingenuity of its members could

devise. For it was apparent that into the treasuries of these national banks would be deposited not only the surplus of the capitalist but as well the hard-earned wage of labor. Disaster befalling one of these banks must of necessity bring close in its train widespread ruin in the community; business men and business enterprises, whose financial interests were involved in these banks, would go down with the bank; and the savings of years of self-denial, the dependence of the widow and the support of the orphan, would be swept away in the common disaster.

Recognizing that when prudent and conservative management controls a national bank, failure is improbable, and dishonesty in bank management rarely fails to work the bank's downfall, and that the task is extremely difficult to provide by law against the fraud and corruption of designing men, Congress wisely enacted laws of a most stringent character, whereby they hoped to prevent malfeasance in bank management; and Congress therein provided for the punishment of those bank officials and employés, who, forgetting the high trust placed within their charge, plundered the funds they were set to guard, and wrecked the banks they had been selected and had sworn to conserve and protect.

239 Par. 4. In addition to the financial responsibility imposed by the statute upon the individual stockholders, which in general may be stated to be substantially to the extent of the par value of the shares held by them, outside of and beyond the actual value of their interests in the bank, the officers of the bank are laid under stringent and sharp criminal responsibility. Upon these directors the statute confers the management and control of the bank, and the law wisely holds them to a close and careful attention to their duty. Every director upon entering upon his office is reminded of his duties by the oath he is compelled to take and subscribe, and his term of office is but for the banking year. Thus in each year the directors are brought before the stockholders to an annual responsibility, and though re-elected, the oath must be taken at each election anew. This oath,—and I give it in part, that it may seem how powerful is this annual reminder,—is in substance as follows: That he will so far as the duty as director devolves upon him, diligently and honestly administer the affairs of the bank of which he has been elected a director, and will not knowingly violate, or willingly permit to be violated any of the provisions of the law relating to national banks. And this oath is forwarded to the Comptroller of the Currency and filed and preserved in his office. An oath which, if observed, in its letter and spirit will make reasonably certain the permanent prosperity of the bank and assure the safety and security of all who shall confide their means to the bank's keeping.

The Comptroller of the Currency is charged with the general supervision of the bank, and he is clothed with plenary power and authority over it and over its officers and directors. And it is his imperative duty whenever he shall find a bank persistently following such plans or conducting itself in such manner as shall imperil the safety of those interested therein or the security of the bank's

depositors, the statute makes it his imperative duty to wind up such bank and preserve for those entitled thereto whatever value may belong to such bank.

Accordingly the law provides that at least five times during the year, and on dates that may be fixed by the comptroller, every national bank shall make to the comptroller accurate and truthful reports of the condition of the bank, exhibiting in detail and under appropriate heads the resources and liabilities of the bank, in such form as he shall prescribe. These reports must be verified by the oath of the president or cashier of the bank, and must be attested as being correct by the signatures of at least three of its directors. These reports are to be of the condition of the bank upon some day then past when the report is required. That is a report is never called for as of some date after the bank is notified to report. Else the bank, warned of the fact that its condition on such future day is to be forwarded, might manipulate its condition, might temporarily swell its assets and reduce its liabilities, for the purpose of presenting a report which, under such careful trimming, would be acceptable to the comptroller, but would in fact not be the accurate showing of the bank's true condition. And so whenever a report is demanded by the comptroller, the directors of the bank are compelled to turn back the pages of its journal and other records and report what was the condition of the bank upon some past day; and thus having no notice or warning what past day will be selected, the bank officials, it was naturally to be expected, would exercise greater care to have its banking-house in all particulars constantly kept in order and ready for inspection.

Par. 5. The records of this bank in evidence, as the same have at different times been referred to in the course of the trial, have shown to you the fact that at the close of each day's business the books of the bank are practically balanced and each account therein closed for the day, and *and* all entries therein carried out into such footings or statements as that, upon a moment's inspection, a person familiar with banking methods can give the exact condition of any depositor's account or the exact condition of any item which has entered into the business of the bank on that or any former day. You have seen the president of the bank, and its cashier thus, without hesitation, turn in your presence to its records whenever a question relating thereto has been asked and give you the condition as carried on these records of any discount or depositor's account or the like, at any date inquired after, whether the date was that of any of the reports introduced in evidence or a date years prior thereto.

Now it is this very matter I have been considering which gives to these reports so made to the comptroller their value, and enables him, when these reports are accurately and truthfully made, to determine therefrom as he might have determined from a personal inspection of the books of the bank the general condition of the bank, and whether it is apparently safe and secure to those dealing with it, and whether it is under conservative, prudent and safe management.

Par. 6. The statute further provides for the purpose of giving information to those specially interested and the public generally, that these reports shall be published in the same form in which they are made and forwarded to the comptroller. And thus it is possible for all who desire to examine these published reports, to have general knowledge of the condition of the bank and on the same points made known to the comptroller. These suggestions emphasize the wisdom of the law in compelling truthful and accurate reports from the bank. If the accounts are not truthful and accurate, in other words, using a phrase which has come into quite general use and common understanding, if these accounts as borne on the books of the bank are "doctored" and the condition of the bank as to the daily balances and footings are so changed when entered into these reports as that they are not truthfully and accurately reported, a deceit may be practiced on the comptroller in the reports submitted to him, and on the parties interested, and on the public in the community where these reports are published. And this the statute condemns, and for such deceit the statute provides that severe punishment be visited upon the guilty parties.

Par. 7. The statute, in requiring that these reports shall be truthful, does not require any difficult task of the bank officials. A substantial synopsis of the aggregates or footings as contained in the books of the bank at the close of any day's business is easily made. And an inspection of the records in evidence, and a comparison of them with the printed part of the reports which have been introduced before you, will show that the books of this bank were kept in substantial accord with the general tenor of the demands made by the comptroller for information! And that in the more material features of these reports the total footings on any date called for could have been copied from the books of the bank right into these reports. And thus the accurate and truthful condition of the bank as shown by its books would in these points be in possession of the comptroller and all persons interested.

240 Par. 8. So important does the law regard the necessity of these reports being accurate and truthful, that section 5209 of the Revised Statutes of the U. S. declares that every president, director, cashier, teller, clerk or agent of any such banking association * * * who makes any false entry in any * * * report * * * of the association with intent * * * to injure or defraud the association or any other company, body politic or corporate, or any individual person, or to deceive any officer of the association, or any agent appointed to examine the affairs of any such association * * * shall be deemed guilty of a misdemeanor and punishment is provided accordingly.

Another section of the law provides that the comptroller shall with the approval of the Secretary of the Treasury, and as often as shall be deemed necessary, appoint suitable persons to make examinations of the affairs of the national banks, and these examiners are empowered to make thorough examination into the affairs of the bank and to examine bank officials upon their oaths and report in detail to the comptroller the condition of the bank examined.

The indictment in this case as originally presented contained 16 counts, but the court has stricken out some of the counts and now strikes out all the counts except the 4th, 5th, 7th, 8th, 9th and 10th counts.

You will therefore understand, gentlemen, that all the counts of said indictment have been and now are withdrawn from your consideration, except the six counts above specifically named, and you will confine your deliberations to the said six counts and will consider no others.

I will now proceed to state to you what these six counts charge against defendant, as to which counts and no other counts you are to determine by your verdict, the guilt or innocence of defendant.

Fourth Count.

Par. 9. The fourth count charges that on the 5th day of August, 1887, the defendant was president of and a director of the Commercial National Bank of Dubuque, which bank was at that date a banking association organized and existing under the laws of Congress; that upon said 5th day of August, in a report made to the comptroller of the condition of said bank at the close of the day's business for the 1st day of August, 1887, said defendant made a certain false entry in that he therein stated that the overdrafts due said bank aggregated, on said August 1, 1887, the sum of $2,948.58; whereas it is alleged that in truth and in fact the overdrafts on that day due to the bank aggregated by many thousands of dollars said amount so stated in said report; that said defendant at the time he made said false entry well knew the same was false, and that defendant made the same therein, with the intent to deceive the officers of said bank, and to deceive any agent then appointed or that might be thereafter appointed to examine the affairs of said bank, and with the intent to defraud said bank, and other corporations, firms and persons then doing or who might thereafter do business with said bank.

Fifth Count.

Par. 10. The fifth count charges that defendant, in said report at close of the day's business of August 1, 1887, of said bank, made therein a certain false entry, wherein he stated that on said August 1, 1887, the liabilities to said bank of its directors (individual or firm) as payers was $65,000, whereas in truth and in fact said liability to said bank of said directors was many thousands of dollars greater than as stated in said entry; that said defendant well knew said entry to be false, and made said entry with intent to deceive and defraud as I have stated same in regard to said fourth count.

Ninth Count.

Par. 11. The ninth count charges that defendant in said report to comptroller at close of the day's business of August 1, 1887,

made a certain false entry, wherein he stated that the loans and discounts held and owned by said bank aggregated the sum of $551,048.60, whereas in truth and in fact the aggregate of loans and discounts held and owned by said bank at close of business on said August 1, 1887, was many thousands of dollars less than said sum in said report stated, as defendant well knew, and that defendant made said false entry with intent to deceive and to defraud as above stated as to fourth count.

Seventh Count.

Par. 12. The seventh count charges that on October 10th, 1887, the defendant then being the president of and a director in said bank in a report to said comptroller of the condition of said bank at the close of business upon October 5, 1887, made a certain false entry, viz: that he therein stated the overdrafts due to said banks was the sum of $5,344.60, whereas in truth and fact at said time the overdrafts due the bank aggregated a sum by many thousands of dollars larger than as so stated, as defendant then well knew, and that defendant made said false entry with intent to deceive and to defraud as above stated as to fourth count.

Eighth Count.

Par. 13. The eighth count charges that in said report to said comptroller of the condition of said bank at close of business on Oct. 5, 1887, defendant made a certain false entry, viz: that he therein stated liabilities of directors (individual and firm) as payers was the sum of $49,867.40, whereas in truth and in fact, as defendant well knew, the liabilities of directors (individual and firm) as payers on said date, was many thousands of dollars larger than the sum so stated in said report, and that defendant made said false entry with intent to deceive and to defraud as stated above as to said fourth count.

Tenth Count.

Par. 14. The tenth count charges that in said report to said comptroller of the condition of said bank, at close of business upon Oct. 5, 1887, said defendant made a certain false entry therein, viz: that he therein stated the loans and discounts held and owned by said bank aggregated the sum of $491,562.85, whereas in truth and in fact the aggregate of the loans and discounts so at said date held by said bank was many thousands of dollars less than said sum by defendant so stated, as defendant then well knew, and that defendant made said false entry with intent to deceive and to defraud as stated above as to said fourth count.

Par. 15. Brought down into small compass and in a form easily understood defendant is charged with having made false entries with regard to the condition of said bank, as to its loans and discounts, as to its overdrafts, and to liabilities due it from its directors

(individual and firm) as payers in each of the reports as to Aug. 1, 1887, and as to Oct. 5, 1887.

The jury, as they may find from the evidence, can find the defendant guilty as to all of these six counts, or not guilty as to all of these six counts, or guilty as to one or more of these six counts and not guilty as to the remaining counts.

To this indictment the defendant pleads not guilty. And this puts in issue every material averment necessary to a conviction.

241 Par. 16. The defendant is by law presumed to be innocent. That is he starts into this trial with the presumption of innocence in his favor.

And before he can be convicted he must be proven to be guilty beyond a reasonable doubt.

And if he is not so proven you must acquit him.

Par. 17. With regard to the crime charged in the various counts submitted to you in the indictment you will observe that there must be proven herein the following points:

1. That the Commercial National Bank of Dubuque was at the dates named in the various counts submitted to you a banking association, organized and existing under the statutes of Congress providing for a national banking system.

2. That defendant, Rufus E. Graves, at the dates named in said counts was the president of said bank and a director therein.

3. That a report of the condition of said bank was, on one or more of the dates named in said counts, made to the Comptroller of the Currency.

4. That said defendant, being at the time the president of and a director in said bank, did make in one or more of said reports to the comptroller a false entry set forth in some one of said counts in said indictment.

5. That said defendant so made such false entry with the intent to deceive any agent then appointed or thereafter to be appointed to examine the condition of said bank, or to deceive some one or more officers of said bank, or with the intent to defraud the said banks or some other corporation, firm or persons.

And before the defendant can be found guilty each of these points must be proven. If any one of them is not proven the Government has not fulfilled the requirements of the law as to proving guilt.

Par. 18. In this case the evidence introduced has proven without dispute many of these points. The defendant has testified in his own behalf and you are authorized to accept as proven herein the first three points, namely: that said Commercial National bank was organized under said statutes, and was doing business as such national bank upon the several dates named in the indictment; that at said date defendant Graves was the president and a director in said bank; and that reports of the condition of said bank were made upon the dates named in said counts, (and said reports have been introduced in evidence before you).

Defendant has also testified before you that the signature purporting to be his upon said reports, is his genuine signature, and

he has also testified before you with reference to his having placed the figures in said reports. So that under the evidence you are authorized to accept as proven that defendant did make said reports and the entries therein, set out in those counts in the indictment, which are submitted to you for your consideration.

Par. 19. There remain therefore for your determination in this case but two disputed points, upon determination of which depends the verdict you are to render herein and these points are:

1. As to the entries or any of them with which defendant stands charged being false entries.

2. (And if you find that they or any of them are false,) as to their having been made by defendant with intent either (1) to deceive any agent then appointed or thereafter to be appointed to examine the condition of said bank, or to deceive some one or more officer of said bank or (2) to defraud said bank or some other corporation, firm or person.

These two remaining and disputed points I will consider in the order just named.

Par. 20. And first as to the false entry. I have to say to you that the term "false entry" as used in this statute when taken with its connecting words, means more than simply an untrue or incorrect entry. For Congress did not thereby intend a mere mistake as to the entry. Congress did not intend to punish a bank director or bank official who inadvertently, through mistake, or perhaps negligently, made in a report an entry which, though in fact incorrect or false, was believed by such bank officer to be true. Humanity is fallible. We are all of us frequently making mistakes. An error might occur by the placing of figures inadvertently in the wrong column, or a footing of the columns entered might be wrong and in fact false and be so entered, without being known to the official and without his intending thereby to make a false entry. A mistake thus honestly made will not expose the maker to punishment under this law.

But the "false entry" contemplated in this statute is an entry known to the maker to be untrue and false, and by him intentionally entered while so knowing its false and untrue nature.

Par. 21. If then you find from the evidence that in either report, that is, the report of the bank's condition on August 1, 1887, or on October 5, 1887, which reports have been introduced in evidence, the entry as to "loans and discounts" or as to "liabilities of directors (individual or firm) as payers," or as to "overdrafts" when therein made by defendant was untrue and false and was known to him to be untrue and false at the time he made it, and having that knowledge, he entered it therein as being correct and true, then you are authorized to find and conclude that the defendant did within the meaning of the statute make a false entry as to the report within which said entry or entries appear. And as to such false entry or entries so by defendant made, this point will then have been proven against defendant.

Par. 22. The defendant has testified before you with relation to the entries in said reports. The books of the bank relating to the

subjects of loans and discounts are in evidence before you. The defendant has testified as to what the books of the banks showed upon these points, as they were then being kept by the bank, and that he knew at the time he made the entries in the reports what the showing was upon these books, as to both loans and discounts, and "overdrafts." He has stated to you the aggregate of "loans and discounts" as shown under such heading on the bank's books, at the close of the day's business to which these reports relate, and has stated that he did not enter into said reports as the aggregate of loans and discounts of the bank on such day said aggregate loans and discounts as then shown on said bank books.

242 Par. 23. As an illustration of the testimony of defendant, for defendant has said the same plan was pursued as to each of the entries as to loans and discounts in each report, take his testimony as to loans and discounts as entered in the report as to the condition of the bank at the close of its business upon August 1, 1887.

The "loans and discounts" account as kept under that heading on the books of the bank, defendant states was at the close of August 1, 1887, the aggregate sum of $490,133.78.

The entry made by defendant in the report to the comptroller states the aggregate of loans and discounts at the close of business on that day to be $551,048.60, a difference of about $60,000 larger as reported to the comptroller, than was then borne on the books of the bank. The defendant has testified before you how this entry as stated in the report was obtained, and that the items which, as he says, constitute the aggregate report to the comptroller are as follows:

Loans and discounts as shown on the books of the bank under that heading	$490,133 78
"Suspended loans" carried under that heading on the books of the bank	10,000 00
Investment fund on account	75,449 82
And to this he has added a portion of the overdrawn accounts of individual depositors of the bank, in an aggregate of	20,465 00
Making a total of	$596,048 60
Then he deducted he says (from this aggregate of what he claims as loans and discounts) what was carried on the books of the bank under the heading of "Contingent account" in an aggregate of	45,000 00
This deduction he says produced the amount of the entry of "loans and discounts" as contained in the report to the comptroller, viz	$551,048 60

The question presented for your consideration as to this entry in said report is—Is this entry of loans and discounts as contained in the report to the comptroller a false entry, as I have defined that term?

Par. 24. The form of report prescribed by the comptroller as shown in the printed portion of the report of August 1, 1887, as introduced in evidence, does not require that the bank officials shall enter in said report the items called for therein, under the same headings given on the books of the bank. The prescribed form you will notice states, in its caption, that it is a report of the condition of the bank, and does not pretend to be an exact copy or transcript of the books of the bank under the several headings contained in the prescribed form. Therefore the defendant was not compelled to enter, on the form prescribed for the report, the exact aggregates carried under such several headings on the books of the bank, provided the aggregates entered in said report truthfully state the condition of the bank at the close of the said day's business with regard to the headings under which the entries are made in the report. Let me illustrate this point. This bank appears to have carried on their books from day to day certain loans and discounts under the heading of "Suspended loans." And the testimony tends to show that these "suspended loans" had been theretofore carried on the books under the heading of "Loans and discounts," but had been withdrawn therefrom as objectionable paper or loans having an improbability of payment, and were temporarily carried under the heading of "Suspended loans" awaiting the action or decision of the board of directors as to these "suspended loans" being withdrawn or charged off from the character of loans, and entered up as a loss on the profit and loss account. I do not understand the Government seriously disputes the correctness of these "suspended loans" being placed in and made a part of the "loans and discounts" entry in the report to the comptroller. For the explanation given would still give these "suspended loans" the character of "loans and discounts" and as being carried on the books of the bank in good faith as a part of their actual loans and discounts—though as I understand, temporarily and for the convenience of the bank, entered on books under another heading, viz., "Suspended loans." And therefore when defendant added the aggregate of said "suspended loans" account to the aggregate of "loans and discount" account as shown on the books, defendant in so doing did not make a false entry. He believed them to be "loans and discounts," and he was justified in so believing, and in good faith so reported them, and under the circumstances did not as to that particular make a false entry. The entry of loans and discounts in reports to the comptroller does not guarantee the solvency of the makers of the paper but it is a statement that in truth and in fact at the date named in the report the bank actually owned "loans and discounts" to the aggregate therein reported.

The evidence does not disclose that any particular method or system of book-keeping is by law demanded of a national bank. It is not required to conform its headings of the various accounts to any prescribed names, nor to the names stated in the form of report prescribed by the comptroller. And therefore when a report is called for, if the person making it enters under the headings in the prescribed form a true statement of the bank's condition on the day

called for in respect to the heading in said form, he has fulfilled the demands of the law. And the application of this proposition I have just illustrated as to the item of "suspended loans."

Par. 25. Did defendant make a false entry as to the $75,449.82 which he has termed investment fund, when he included that in his entry of "loans and discounts" in this report to the comptroller?

The items constituting this aggregate of $75,449.82 have been placed in evidence by defendant. It is shown without controversy that some $60,000 of the bonds of the Iowa Iron Works Co. of Dubuque entered into this aggregate called "investment fund" and that these bonds belonged to the bank and were secured by mortgages.

You have heard the evidence tendered, as tending to show why the amount of these bonds were by defendant entered in the reports to the comptroller as being "loans and discounts" held by the bank. The form prescribed for the report as it is in evidence has a heading wherein are to be entered, after entry to be made of U. S. bonds, "Other stocks, bonds and mortgages (market value see schedule.)" It would appear that reasonably and naturally all bonds owned by the bank should rightfully have been entered under this appropriate heading. The question arises Why did not defendant enter these $60,000 bonds under that heading? Defendant has introduced evidence on this point and you are to consider and determine whether these bonds if correctly entered would have been entered in the report under the heading of "Other (than U. S.) stocks, bonds and mortgages," or as the same were actually entered, under the heading of "Loans and discounts;" and if a correct entry would have placed them under the heading of "Other stocks, bonds, etc." then inquire whether the evidence satisfies you of good faith and honest action of defendant in entering such bonds, when reporting to the comptroller as "loans and discounts," or whether for the purpose of swelling or improperly enlarging his "loans and discounts" entry to the comptroller, defendant knowing they properly should have been entered under another heading, intentionally entered them in such report under the heading of "Loans and discounts."

243 Par. 26. Under all the facts proven, you are to decide whether the claim of the Government is correct, that the defendant in entering in the report to the comptroller these $60,000 bonds as "loans and discount" made a false entry within the meaning of that term as I have hereinbefore defined it.

And in considering this matter you may notice that on the first or outside page of this report appears the heading "Other stocks, bonds and mortgages" and you may further notice that these $60,000 Iowa Iron Works Co. bonds are not there entered although certain other bonds to the amount of $50,000 are entered under that heading; and there is also entered under that heading of "Other stocks, bonds," etc., $8,500 of stock of said Iowa Iron Works Co. Ought these $60,000 to have been entered in this report under heading "Other (than U. S.) stocks, bonds and mortgages?" If they should have been entered there and were not there entered, but were entered wrongly under "loans and discounts," is any rea-

son or motive apparent for the incorrect entry, if you find it such? On the other hand you have the reasons as given by defendant; do these reasons satisfy you? Do they satisfactorily explain the matter to you, consistent with honest motives in the defendant's action; or is the contention of the Government the more consistent with the evidence introduced and the facts proven, when the Government claims that the defendant knew the entry he made was calculated to deceive the comptroller and make his report state an untrue and false condition of the loans and discounts as being larger than they actually were, and in making the reported condition of the stocks and bonds less than they actually were at that time? Did defendant fear that said entry of these $60,000 bonds in the entry of "other stocks and bonds" would bring upon him the censure of the comptroller, and for the purpose of avoiding such censure did defendant omit these bonds from the entry of "other stocks and bonds" and enter them therein under head of "Loans and discounts?"

You are to determine these matters from the evidence and consider any motives which you may find from the evidence influenced defendant in making the entry as he did make it, and from all the facts proven determine whether or not defendant made, as to said "loans and discount" entry, a false entry within the definition of the term as I have heretofore given it to you.

Par. 27. The farther question remains as to this "loans and discount" entry in the report to the comptroller, did the defendant make a false entry in such report, when he entered as "loans and discounts" the farther sum of $20,465, which he has testified before you is composed of part of the overdrafts that day shown by the books of the bank to exist in the accounts of various depositors whose names he has given you? It will be convenient to consider this question in connection with the farther charge in the indictment, with reference to said report of August 1, 1887, that defendant made a false entry in said report as to overdrafts.

The proof shows that the amount of overdrafts entered in said report was the aggregate of $2,948.38 and defendant has testified before you that the aggregate overdrafts upon that day, as shown by the books of the bank, was the sum of $23,413.38. So that the books of the bank at the close of business on August 1, 1887, show an aggregate of overdrafts in excess of that entered in said report of $20,463. In other words, while the books of the bank, in the progress of their regular keeping from day to day showed the accounts of its depositors to be then overdrawn in the aggregate of $23,413.38, the entry in the report to the comptroller as to the condition of overdrafts that day was $20,465 less than shown by the books and the entry in such report was the sum of $2,948.38.

You will have noticed that this difference ($20,465) is the exact amount which defendant testifies he entered from or took from the overdraft account of the books of the bank and put into the entry in the report as to "loans and discounts." And the matter may thus be stated. If defendant rightly did this, that is if in so doing he made a report to the comptroller of the true condition of the

bank, he did not then make a false entry in these particulars. But if the entry in reporting the overdraft that day as $2,948.38 instead of $23,413.38 was not a truthful entry then it would naturally follow that the entry in the "loans and discounts" of said $20,465 of overdrafts was also not a truthful entry. For this sum of $20,465 of overdrafts could not have been truthfully entered in both overdrafts and loans and discounts. In which did a truthful entry of the condition of the bank require it to be entered?

Now there is no difficulty in understanding what an overdraft is. There is no conflict in the testimony on this point. The books of the bank as testified to by defendant and by all the witnesses, and as themselves in evidence before you, show that an overdraft occurs whenever a depositor overdraws the amount of his deposit. I deposit in a bank a thousand dollars subject to be checked out. I commence to check it out. And whenever the amount of my checks paid by the bank exceed the amount of the funds I have deposited, an overdraft occurs in my account, and such overdraft is the amount the bank has thus paid, over and beyond the amount I have deposited.

Where then in the report to the comptroller should these overdrafts appear? You will find upon looking at the report made to the comptroller that it contains a heading called "Overdrafts." This heading is "Overdrafts," plainly and simply, and without more "overdrafts." This is the form the comptroller has prescribed and which it was the duty of the defendant to follow and to enter correctly and truthfully whenever he made an entry in said report with regard to the condition of the bank as to overdrafts.

Counsel for defendant have argued to you that an overdraft is in fact a loan and that therefore the defendant was justified in including "overdrafts" in "loans and discounts." But the comptroller demanded that the bank should report "overdrafts" in one place in the report, as well as "loans" in another place. Defendant assumed to report "overdrafts." Did he make a true entry thereof? No explanation on the report advises the comptroller that the entry as to "overdrafts" is an impartial or incomplete entry, as to "overdrafts" actually existing at the time the report assumed to give them.

There is no separate heading of "Overdrafts arranged for" in the report.

Let us for a moment recur to a point I have heretofore discussed. What is the object of these reports to the comptroller? Unquestionably to advise him as to the condition and method of management of the bank. Why are these reports required to be published in the public prints in the community where the bank does business? Without doubt to afford information to the depositors, other banks, and public generally of the condition of the bank and the methods pursued in its management. Hence the purpose and manifest wisdom of Congress in requiring a true report of the condition of the bank. Else a bank tottering on the edge of insolvency or already insolvent and actually in a wrecked condition, and unreliable and unsafe in its method of management, would by a law

which had in view the safety of the community—be by that law afforded most ready means of deceiving the community, whose suspicions, if aroused, would by these false reports be lulled into repose, and the bank thereby enabled the more completely to pursue any scheme of bank wrecking or robbery upon which it had entered.

244 Now what would be the difference, or would there be any, in the comptroller's office as between a slight aggregate of overdrafts, say $2,948, in a report received, and one showing eight times as large (say $23,413.38) in his opinion of the soundness of the bank and its management? Or take an illustration from the evidence before you involving the same principle, but which, because of the large disparity between report and bank records in this respect, may present more clearly the point under consideration.

Par. 28. The testimony given by defendan- shows that on April 24, 1884, he reported to the compt-oller the aggregate overdrafts of the bank as being.....	$5,104 69
While defendant states the overdrafts on that day as shown by the records of the bank aggregated.....	$149,724 05
Making a difference between the overdraft as reported to the comptroller and as shown on the books of the bank of.....	$144,619 36

In other words on that day this bank with a capital of $100,000 had overdrafts it was carrying for its depositors of well nigh fifty per cent. in excess of its capital.

Can you doubt, gentlemen, that the judgment of the comptroller would have been different as to this bank's condition and as to its management, had he found the sworn report from this bank showing within a few dollars of $150,090 overdrafts, from what it was when he found overdrafts reported as a trifle over $5,000? Had this immense aggregate of overdrafts been made known to the comptroller how long think you he would have permitted this bank to have continued business?

In this community where these reports were published, have you any doubt, gentlemen, as to whether those dealings with this bank, entrusting their funds to its keeping and management, would have felt differently had they known that instead of the $5,000 published in its report the books of the bank actually contained overdrafts of about $150,000, or nearly thirty times greater than the amount published as true, and exceeding its capital stock by $500,000? How long do you think the country banks having deposits in this bank would have permitted these deposits to remain had they known its overdrafts aggregated $150,090? Was the ent-y of $5,000 overdraft instead of $150,000 calculated to deceive?

But as bearing on this matter consider the farther statement of the defendant that this $144,00- (carried on its books, but not repocted as overdrafts) was in the report forwarded to the comptroller and published in the papers of this city, was carried into and reported as a part of its loans and discounts thus swelling the aggregate of loans and discounts over $144,000.

And now put these two matters together. If this community had known that the loans and discount statement as published included and was swelled by an addition thereto of $145,000 of overdrafts, and that the overdraft account as published was $145,000 less than the overdrafts as shown by and actually being carried on the books of the bank, have you any doubt that the depositors and public generally would have viewed the bank, believed its condition, and regarded its management in a very different light from the opinions on this point held and experienced when they read the report as actually made?

This illustration, apparently an extreme one, but one proved without contradiction by the testimony of the defendant to have actually occurred, and one which but for this testimony of defendant I would not have dared to imagine had ever existed, this illustration enforces the wisdom of the requirement of Congress that the entries in these reports must be truthful and correct entries.

Par. 29. Counsel for defendant have argued before you that it makes no difference if overdrafts are entered in loans and discounts for they are on the same side of the report and are resources. But the very object of the comptroller in dividing up the resources is that he may thereby gain a knowledge as to what sort of resources the bank has. And to put overdrafts as loans and discounts, or as cash because loans and discounts and cash are on the same side, to wit are resources, is to report to the comptroller a state or condition of the bank not justified by this reason according to the books of the bank.

Par. 30. Another matter bearing on the point under discussion demands your consideration.

A letter has been introduced in evidence from the comptroller's office dated July 1, 1887, and which has been read before you. In this letter under date of July 1, 1887, the comptroller notifies defendant and the other directors of the bank, among other matters complained of by him, that "the overdrafts are in large amounts and some of them having been running for a long time."

Now the report of the bank as to its condition upon May 13, 1887, in its entry as to overdrafts shows to the comptroller overdrafts existing to the amount of $7,810.23. Can you believe that this is the "large amount of overdrafts" to which the comptroller refers? Or does he refer to the actual amount of overdrafts as found on the books by Examiner Stone and by him in June reported to the comptroller? The evidence of the defendant and the books of the bank show that on the date of that report the bank overdrafts were actually $18,009.45. Is it not probable it is this amount, almost one-fifth the capital stock of the bank, to which the comptroller refers as large amount of overdrafts?

The report of the condition of the bank at the close of its business on August 1, 1887, was a month or so after this letter of the comptroller had been received by the directors of the bank. Did that letter of the comptroller influence the method of defendant in making up his report of August 1, 1887? In his letter the comptroller had pointedly said:

"I fear you do not realize the responsibility resting upon the directors in the management of a national bank. Should the time come for the enforcement of the law under section 5239 U. S. R. S. it will be enforced to the fullest extent."

What do the books of the bank and the testimony of defendant show were the actual overdrafts borne on such books August 1, 1887? The aggregate overdrafts are $23,413.58, and amount $15,603.62 greater than the overdrafts reported in the last bank report introduced, which preceded this letter of the comptroller, and $5,404.13 larger than was actually carried on the books of the bank at the date when the report of May 13 was made. Now the comptroller under threat of the penalty of enforcing the law to the fullest extent, among other matters called the attention of the defendant and the other directors to the large amount of overdrafts and the long time some of them had been standing. Had the report of August 1, 1887, reported to the comptroller the overdrafts actually standing on that day on the books of the bank, the report would have shown an actual increase directly in the face of the comptroller's letter of over $5,000 in the overdrafts carried by the bank.

How were these overdrafts reported to the comptroller? The entry was that the overdrafts on that day carried by the bank were $2,948.08. The May report has stated $7,810.23 as the overdrafts then being carried. The comptroller's letter was then received. Another report is demanded; and while the books show an
245 increase meanwhile in the actual overdrafts carried by the bank of $5,404.13, the report of August 1, when compared with the report of May (preceding the letter), reports as having occurred a decrease in overdrafts of the bank of $4,862.15.

An actual increase of.....	$5,404 13
A reported decrease of.....	4,862 15

Par. 31. Coming back to the question I was considering, as to the undisputed fact that over $20,000 of that which on the books of the bank was on August 1, 1887, carried as overdrafts were not entered as overdrafts by defendant in his said report to the comptroller August 1, 1887, but were by him entered into said report as loans and discounts, it is for you to say under all the evidence whether when defendant made the entries in these matters in said report he made a false entry within the meaning of that term as I have defined it.

Par. 32. Testimony was offered by defendant as affecting this manner of dealing with overdrafts, in which offer it was attempted to show that other banks had been doing and were at the time pursuing in their reports to the comptroller the same methods claimed to have been pursued by this bank. But the court refused to permit the introduction of the evidence thus offered for this purpose. The court could not permit the practice of any other bank official in this regard to be considered by the jury as justification to defendant in his action. Two wrongs never made a right. Defendant must be judged by you on this point by the application of the

law to the facts proven in this case. You will not therefore consider, as making right any wrong entry made by him, any testimony with reference to what any other bank did or may have done in this matter. But the court permitted defendant to show these for the purpose of possibly bearing on the question whether by what defendant entered as to overdrafts the defendant intended to defraud or deceive any of the parties named in the indictment. And any knowledge defendant had on this point as to the said practice of any other bank may thus be considered by you when you come to consider the question of defendant's intent in this matter and no farther.

Par. 33. Defendant testified that in obtaining the aggregate reported as loans and discounts in his reports as on August 1, 1887, and October 5, 1987, he deducted, from what would otherwise have been reported as loans and discounts, the sum of $45,000, which he calls a "contingent fund." In so doing did he make his report truthful or did he make the loans and discounts entry incorrect or untrue?

From what source did this $45,000 come? What caused it to be raised? How was it raised and what did the bank do with it?

In the order in evidence from the comptroller's office dated July 1, 1887, the bank was notified that its capital was impaired $46,000, and that the stockholders must raise and pay that amount or the comptroller would proceed to put the bank in liquidation, that is would put the bank in charge of an officer to be appointed by him, close its doors and wind up its affairs. This order was *preemptory*. The terms were imperative. And it demanded of the bank officials and directors an acknowledge- of its receipt, etc. Do any of you doubt that the comptroller meant what he said? Is there any question in your mind that the directors felt and knew the comptroller was in earnest in the matter. Read the letter which defendant says he wrote and which he, with the other directors, signed and forwarded to the comptroller, and all possible doubt on this point is removed. In that letter defendant and the other directors stated that the sum of $45,000 as demanded had been contributed and paid in to the cashier of the bank, and reference is made in the letter to "the good work as well begun." How was this $45,000 paid in to the cashier as the letter informs him? A part was paid in cash and was placed among the other cash in the bank's vaults. For the remainder, notes were given and the discount register or record shows a regular discount by the bank of these notes, the larger part of which are shown to have presently been paid in cash. Now can there be any doubt in the mind of any sane man that if the statement in the letter was true and not willfully false and intentionally deceitful, that as an actual fact the $45,000 demanded had been actually paid in to the cashier? And if paid in to the cashier does not the discount record of the bank tell a truthful sale, when it shows the note part of that $45,000 was discounted by the bank just as it would have discounted any other notes? This makes the letter true and the discount record true. A part was paid in cash. Notes were discounted for the remainder, and the

cash proceeds went into the treasury of the bank, and as stated in the letter the $45,000 was paid to the cashier. The good work had indeed been well begun, and thereupon, these discounted notes became and were the property of the bank, just as truly and fully as any other notes discounted by the bank were the bank's property, or the statement of the letter were untrue and radically false.

All this occurred before the August report was made, and there appears no dispute in the evidence concerning it. And it is shown without contradiction that at the time of this August report some $30,000 of this $45,000 yet remained upon the books of the bank as paper discounted by the bank. Can there be any serious question that it should have been reported to the comptroller and included in the loans and discounts reported? And that when this $30,000 (of the $45,000) was subtracted from what would otherwise have been the aggregate loans and discounts the report was thereby made untrue and incorrect?

Par. 34. But again the evidence without contradiction showed that at the time of this August report $15,000 of this $45,000 had been paid in cash by the directors, and no other loan and discount paper for it was held by the bank. Why then was this $15,000 in addition to the $30,000 deducted from the loans and discounts? What possible justification can be urged for deducting this cash item of $15,000 from loans and discounts for the purpose of showing the true loans and discounts? Is there a doubt in the minds of any juror that according to the testimony of defendant, corroborated by that of Cashier Harris and by the entries in the books of the bank of that period, that this deduction of $15,000 was incorrectly made and the aggregate of loans and discounts thereby obtained was incorrect and untrue?

246 Par. 35. Defendant claims, and has offered some testimony on that theory, that this money and notes (this $85,000) did not belong to the bank either in August or October, 1887, and in fact they did not belong to the bank until depreciated or objectionable paper to that extent had been charged off by the board of directors, and that this was not done until after October, 1887. But the order of the comptroller demanding that $45,000 be raised, neither contained nor referred to any such condition. That amount was to be unconditionally raised and unconditionally paid into the bank. The penalty for not so doing was the closing of the bank. The letter in the handwriting of the defendant and signed by him and his associate directors and sent to the comptroller informed the comptroller that the $45,000 had been paid into the bank. The letter neither stated nor made reference to any condition such as now claimed by defendant. Was the letter thus written with intent to deceive the comptroller? There is no ground shown for such a presumption but rather that the latter was written to inform the comptroller what it states to him and was signed by defendant at the time when he meant and intended the statement he then signed. And he cannot successfully now urge a condition inconsistent with his letter and which, if stated in that letter it is but reasonable to believe, would have resulted in what the comptroller threatened,

the closing of the bank doors. But the question still remains with reference to this point for the jury to determine, Did defendant in what he did with reference to the deducting of this $45,000 from loans and discounts, and entering in the report to the comptroller as correct and true the amount of loans and discounts as thus obtained, did defendant make a false entry within the meaning of this term as I have defined it?

Par. 36. I come now to the charge that in the report of August 1st, 1887, defendant made a false entry with reference to the liabilities of the directors.

The Government contends that this entry is too small by many thousands of dollars.

The provisions of law wisely authorized the requirement that the bank shall report the liability of its directors to it. A bank rarely fails, (and with reasonable certainty as to the answer I may appeal to your knowledge and as a matter of common observation among men that a bank is scarcely ever, if ever, wrecked) by loans to parties not members of its board of management. Hence the wisdom of the requirement that the report state the liability of directors. The bank directors must each be the owners of ten shares of stock and there must be at least five directors. Frequently, if not ordinarily, some of the directors are larger stockholders. So that the law and the public can generally rely upon the interested directors seeing that the bank is not wrecked by appropriation, by parties outside the board, of any large amount of the funds of the bank, although the law limits even these loans. But the danger arises when the parties in the board either conspire together or connive at some of their members taking large amounts of the funds of the bank for their use in speculation or investments or the like. And so in each report there is required to be entered the liabilities of directors. In this report it is stated as "liabilities of directors, (individual and firm) as payers."

Par. 37. The testimony of defendant is that on August 1, 1887, the bank was the owner of over $18,000 of paper drawn by L. D. Randall & Co.; that L. D. Randall was at that date a director in this bank, and when this paper was discounted was a member of the firm of L. D. Randall & Co.; but that in this report to the comptroller he did not enter as a liability of director this said amount of L. D. Randall & Co. paper, because, as he thought, L. D. Randall was not liable as payer. If he so thought at that time he erred in judgment.

You are instructed that in this respect the entry as to liabilities of directors is according to defendant's evidence not correct and true. And that defendant should have entered that amount under the heading of Liabilities of directors. As to whether this entry is, as made by defendant, a false entry within the meaning of the term as I have defined it, you must decide under all the facts proven.

Here also you may pertinently consider what, if any, influence upon the method which defendant practiced as to the Randall & Co. paper in report of August 1, 1887, the letter of the comptroller had.

Par. 38. In the last report in the evidence preceding this letter from the comptroller there had been reported as liabilities of directors as payors the aggregate of $53,867.08; this was of date of May 13, 1887.

The comptroller's letter as I have stated is July 1st, 1887. In this letter the comptroller calls attention, by special reference, to the fact that certain loans he names exceeded the limit prescribed by law, and among them the comptroller named the loans to L. D. Randall of $15,049. (At this time L. D. Randall was a director in the bank.) The comptroller notifies defendant and the other directors of the bank as follows: "Attention is again called to the unlawful use of the bank's funds by its officers and directors," and he adds "I must ask that these loans be reduced immediately to within the limit," etc.

Within about a month after the receipt of this letter another report was demanded by the comptroller. At the time of this last-called-for report of August 1, 1887, the bank was the holder of paper drawn by L. D. Randall & Co. for the amount of $18,000, and of L. D. Randall of about $5,000, in all exceeding the sum of $23,000, as paper on which said L. D. Randall, then a director, was liable as payer.

Par. 39. The testimony of the defendant is to the effect that he did not enter this paper on which L. D. Randall was liable as a payor in the liabilities of directors as the same is entered in the report of August 1, 1887, and as of October 5, 1887. In this respect the entry as to liabilities of directors is in each of said reports incorrect and untrue. And it is for the jury to say from all the facts and circumstances proven, whether defendant made with reference thereto in said reports a false entry within the meaning of said term as I have defined it to them in the preceding instructions.

The defendant was permitted to state the reason why, as he stated, he did not enter the said L. D. Randall & Co. paper among liabilities of directors, etc. The court permitted this reason to be given that the jury might consider it as bearing on the question of intent; whether defendant had in his action any intent to deceive or defraud the persons named in the indictment, if you find that he made a false entry in this particular.

247 Par. 40. As to one other piece of paper purporting to be a draft made by the Iowa City Gas Light Co. by J. K. Graves, president, in favor of J. K. Graves and held by the bank for about $5,700, defendant testifies that he did not enter this paper among liability of directors. Evidence has been admitted, namely the sworn testimony of the defendant, tending to show that at the time this draft was drawn, or the original draft of same import of which this was one of the renewals, defendant knew that this paper, drawn by said J. K. Graves, who was then a director of the bank and a brother of defendant, and nominally drawn by him as president of the gas company, was in fact the paper of J. K. Graves and so known to the defendant. The Government contends that this draft was but a ruse or device whereby the said J. K. Graves was to be permitted to further increase his paper in the bank, under attempted

color of a draft by said gas company. If the jury find from the facts proven that at the time this paper was drawn and taken by the bank said J. K. Graves had no authority to sign said paper with the name of said gas company as by him as its said president, and that the paper was in fact said J. K. Graves' paper and discounted for J. K. Graves' personal benefit, and that all these facts were at the time fully known to said defendant, and so knowing said defendant intentionally did not enter the same among liabilities of directors, the jury will determine from all the facts proven whether said defendant made a false entry in said report of liabilities of directors with reference to this matter, within the meaning of the term false entry as heretofore defined to them.

Par. 41. I have considered at some detail the items entering into the report of August, 1887. Many of the same items and much of the same method of making the report enter into the report as of October 5, 1887. I shall not attempt to consider the several items of the October report. The jury may take the method of treatment I have given as to the August report and themselves apply the same substantial method so far as properly applicable to the October report. And when they have considered all the evidence relating to the charges of false entries in said October report, and applying thereto the law as I have herein given it, the jury will determine whether the defendant made any false entry (as I have heretofore defined it) in said October report, with regard to loans and discounts or overdrafts, or liabilities of directors as stated in the several counts relating thereto.

Par. 42. If the jury do not find in any one of the two reports above described that defendant made any false entry charged in the indictment as the same is submitted to you, and as the term false entry has been hereinbefore described, and defined, you will proceed no further in your investigations. For the making of such false entry therein is, as heretofore stated, essential to the finding of defendant's guilt. If he made no false entry, he is not guilty of the crime charged and must be acquitted.

But if you should find, within the instructions above given you, that defendant did make any such false entry as to the particulars above stated, and within the meaning of the term as I have defined it to you, then you will proceed to consider the second and remaining point, which the Government must prove to entitle it to a verdict of guilty, viz:

Did defendant make such false entry or entries, or any of them, with intent to deceive any agent appointed to examine the bank's condition, or to deceive some one or more officers of said bank or to defraud said bank or any other corporation or firm or person?

And if the jury find such intent, in any manner as charged, is proven against defendant, this finding, in connection with finding defendant made the false entry as above defined, will authorize a verdict of guilty against defendant. But if the jury do not find proven against defendant any such intent, the defendant must be acquitted.

Par. 43. It is a sound and wise principle of law, that a man shall

be held to intend the legitimate consequences of his acts—that is, that he intended that which is the natural and necessary result of his act, freely and knowingly done. If a man, knowing a coin is counterfeit, passes that coin upon another as genuine, he will not be allowed to say that he passed it with innocent intent. From his act of intentionally passing the coin as genuine, when he knows it to be counterfeit, the law presumes and holds him to the presumption that he passed it with guilty intent.

If a man brings to me a horse and proposes to sell it to me, and affirms to me that he owns the horse, and that his ownership is full and complete, when in fact he knows the horse belongs to another and that he has not the least right or interest as owner in said horse, and I, relying on his statement, purchase the horse of him, he will not be heard to claim that he sold the horse to me with innocent intent, but the law stamps his act as done with guilty intent, as done with an intent to deceive me, and with fraudulent and false pretences. In other words, wrongful acts knowingly and intentionally committed can neither be justified nor excused on the ground of innocent intent. The color of the act determines the complexion of the intent.

Par. 44. If a director of a national bank, in a report to the comptroller of the condition of his bank, makes an entry which is false, which does not contain or state the truth with regard to the condition of the bank upon the date named in this report, and such entry relates to a material matter, and such director at the time he made such false entry knew it was false and calculated to deceive, and that it did not give a true and correct statement of said bank's condition at the time with respect to such entry, in such case the law will not permit him to say that he made such false entry with innocent intent, and not expecting to deceive any one thereby. If such a director willfully puts up a report designed to allay any suspicion then existing; designed to induce faith and trust in his institution, and it is proven that the entries in that report are false in fact, and at the time he made them he knew them to be false, it would be a mockery upon justice to allow him to say that he made those entries with innocent intent. In such a case, gentlemen, the act done is in law stamped with guilty intent on the part of the person doing it.

248 Par. 45. Notice, gentlemen, that in all the instances I have named, I have given prominence to the fact of knowledge in the person doing the act. I do not mean that a man can be convicted of the crime charged in this indictment for merely negligent, careless action. Speaking generally I may say, that if the director making the false entry was in fact ignorant of the condition of the bank, and did not know its resources and liabilities, however recreant he might be to the position he held and the duties devolving upon him, and whatever other liabilities, civil or criminal, he might thereby be subject to, he could not be convicted under the section on which this indictment is based. And yet I ought to add that this does not in anywise, justify or authorize a director to purposely, willfully and knowingly close his eyes and his ears to the facts

around him, or which lie directly in his path, for the purpose of making it easier to those engaged in plundering or wrecking a bank. Let me illustrate my meaning. If a director of a national bank, knowing that those in charge of or actively managing the bank, are despoiling it, robbing its treasury, knowing that the funds of the bank are being dissipated improperly, withdrawn from the bank, and worthless paper, (miscalled "securities,") is being substituted instead thereof,—if thus knowing, such director refuses to accept the information lying directly across his path and purposely keeps himself in ignorance or refrains from taking active part in the bank's management, that he may thereby permit such transactions to go undisturbed or undetected, and he then lends the credit of his name, puts his signature to untrue and false reports connected with the condition of the bank for the purpose of enabling such a fraud to go undetected,—in such a case it will be no shield to him to show that he had no knowledge of the truth or falsity of the report he has signed. To hold otherwise would be to make the law go hand in hand with rankest injustice, to legalize robbery, to make our temples of justice modern cities of refuge, and our courts encouragers of what plain people properly call crime.

Par. 46. Therefore I have to say to you, gentlemen, as the law of the case upon this point, that if the defendant, at the date named in the reports to the comptroller named in the indictment, as submitted to you, knowingly inserted in a report of the resources and liabilities of his bank a false entry as here-fore defined to you and as charged in the indictment submitted to you, of such a nature that the ordinary, natural and legitimate result thereof would be to deceive the other officers of the bank, or any one of them, or any agent then or thereafter appointed to examine affairs of said bank, or to defraud the bank or any other company, body politic or corporation, or any individual person whatever, then, in the absence of contravening proof, you are authorized and justified to find that defendant made such false entry with the intent to deceive or to defraud within the meaning of the statute and to find against the defendant as to the second and remaining point above stated.

Par. 47. You may have noticed, as I stated to you the section under which defendant has been brought to trial, that the statute does not require that any person should have been in fact defrauded or actually deceived by the false entry in order to make the crime complete. And so it is not necessary, in order to complete the proof of a violation of this section, that it shall be shown to you that any officer of the bank or any agent appointed to examine into the condition of the bank has in fact been deceived by a false entry in the report, nor that in fact any company, corporation or individual person has been defrauded by the false entry. The attempt to deceive, or to defraud may not have been adroitly planned or skillfully performed,—it may have been so bungeingly carried into execution as that every officer of the bank and the bank examiner could, upon referring to the bank record, readily detect the entry to be a false entry,—yet if there was any attempt to deceive, if the false entry was knowingly entered, and was a false entry which was

naturally and necessarily calculated to mislead, this would be sufficient, in the absence of contravening proof, to authorize the finding that the person making it made such false entry with intent to deceive.

Par. 48. The law might have made it otherwise, but it has not. The law wisely was framed to meet the criminal on the very threshold of his crime and before he had consum-ated such crime. The policy of the law was by Congress wisely established, so that one reading the report should have the right to rely thereon as being a true report. And a depositor or bank dealing with the bank making the report is not required to investigate the books of the reporting bank to see if the report is honest and true. The bank official at his peril must make it truthful according to his knowledge when he signs his name to the report as being correct. And if he intentionally made it otherwise he must answer to the law in any attempted or intended deceit he has practiced.

Par. 49. And therefore if the evidence shall prove to you that any false entry, as I have defined it, submitted to you for your consideration, has been knowingly made by the defendant, with the intent to defraud or to deceive any of the parties named in the indictment, that is sufficient to constitute the crime charged against the defendant, even though none of said named parties have actually and in fact been deceived, or defrauded thereby. The gist of the crime is in making the false entry with intent to deceive or defraud any of said parties.

Par. 50. Your verdict, gentlemen, must be found upon the evidence introduced before you, and be considered by you under the law as given by the court. As I have heretofore said to you, this trial commences before you with the presumption of innocence in favor of defendant, and your verdict must be for defendant, unless you find the evidence overthrows this presumption, and brings your minds beyond a reasonable doubt to a verdict of guilty.

249 Par. 51. I have to say to you further, gentlemen, and this statement is to be understood as affecting the entire charge given you, that if you can reconcile the evidence before you upon any reasonable hypothesis of the defendant's innocence, it is your duty to do so. And before you can find the defendant guilty of the crime charged in the indictment you must find such guilt beyond a reasonable doubt. This reasonable doubt relates to the defendant's guilt under all the evidence. You will take up the evidence bearing on each proposition of fact, and determine whether that fact has been proven. And you must find the defendant's guilt has been proven beyond a reasonable doubt, before you are authorized to return a verdict of guilty. And after considering all the evidence, if you have a reasonable doubt of the guilt of the defendant you must acquit him. But if upon such consideration, you do not have a reasonable doubt of his guilt, it is your duty to return a verdict of guilty.

Par. 52. A reasonable doubt, as I have used the term, is what the term indicates. It is a doubt based on reason, and which is reason-

able in view of all the evidence. It is an honest, substantial misgiving, generated by insufficiency of proof. It is not a captious doubt, nor a doubt suggested by ingenuity of council or jury, and not warranted by the testimony; nor is it a doubt born of a merciful inclination to permit the defendant to escape conviction, nor prompted by sympathy for him or those connected with him. But if on impartial comparison and consideration of all the evidence you can candidly say that you are not satisfied of the defendant's guilt, you have a reasonable doubt. If, however, on an impartial comparison and consideration of all the evidence, you have an abiding conviction of the guilt of defendant,—such a conviction as you would be willing to act upon in the more weighty and important matters relating to your own affairs,—then you have no reasonable doubt.

Par. 53. The defendant has testified in his own behalf. This he had a right to do under the laws of the United States. And he has the same right to place himself on the witness stand, that the law gives him to have any other person sworn as a witness in his behalf. But it is the duty of the court to state that the law sends his testimony to you charged with whatever may properly attach to or affect that testimony because of his interest in the result of the case. It has been but a few years, comparatively, since a defendant charged with crime was by law denied the privilege of testifying for himself. This theory of the law (which refused to accept a man as a witness in his own defense, when *arranged* in court and on trial upon a criminal charge,) was that the interest of the defendant in the case was necessarily so great, and so great the temptation to testify falsely in order to acquit himself, that the law refused to permit testimony, so liable to be tainted with perjury, to be placed before the jury. And therefore the mouth of defendant was closed by operation of law. But, as I heartily believe, a wiser policy or theory of law, now prevails. And I had the pleasure of casting my vote in favor of a statute which in the State courts of Iowa, has opened to a defendant in a criminal trial, the full privileges of the witness stand. And the statu-es of the United States award him the same privilege. The Government however cannot compel him to testify on his own trial. Possibly in some cases the evidence necessary to complete proof of guilt is alone in defendant's possession. Yet the district attorney with all the power of this great nation behind him, to compel witnesses to testify to the truth, is powerless to open the mouth of such defendant. The nation itself is not strong enough to force from a defendant, and against his will, even a single word of testimony or to compel such unwilling defendant to submit to the jury a paper or line of writing. But he may if he will testify in his own interest. And when he does so testify, the law sends his testimony to you, charged with this interest, and you are to examine and test it accordingly. The defendant may testify as truly, and his testimony be in fact entitled to as much weight at the hands of the jury, as that of any other witness. You are to determine that fact in the case, as you may consider it under all the circumstances of the case, and with reference to its consistency in itself, or as it may be corroborated by evidence, deemed by you to be credible. A

defendant's testimony may be so manifestly tinctured and tainted with his interest and with a desire to thereby acquit himself, as that the jury will feel compelled to cast it aside and wholly reject it. You are to determine in this case, what, if any, weight the defendant's testimony shall have at your hands. And when you have considered it in the lines I have suggested, and compared it with the other evidences in the case and the facts and circumstances you may find proven, give to the defendant's testimony such weight and only such weight as you may find it is rightly entitled to receive at your hands.

Par. 54. You are the sole judges of the testimony. Under the oaths you have taken you are to receive as the law applicable to this case the instructions given you by the court, and you are to be governed by them. But it is your sole province to determine the weight to be given to the testimony which has been introduced. Consider the demeanor of the witnesses on the witness stand; their relation to the defendant in any way, business or otherwise; their interest or lack of interest in the case; or their connection with any case which might be in anywise affected or influenced by the verdict to be rendered in this case; any bias or prejudice shown by them; the consistency or inconsistency of their statements; whether their testimony is corroborated or contradicted by other testimony regarded by you as credible and worthy of belief, and having considered the testimony in the light of all the circumstances in the case, give to the testimony of each witness that *right* to which you find it is entitled.

Par. 55. Wherever you can consistently reconcile conflicting testimony, it is your duty to do so; but where you find any conflict of testimony you cannot reconcile, do not hesitate to cast aside that which you deem incorrect and untrue, and accept and hold fast to the truth as you find it established in the evidence.

Gentlemen, take this case, determined to do justice both to the Government and to the defendant. The Government is in nowise entitled to, nor does it ask, the conviction of any man who is not proven guilty of the crime with which he is charged, nor should your verdict declare the guilt of such a one. But if defendant is proven guilty within the terms of the instructions I have given you, it is your duty to say so by your verdict. Thus innocence is protected by our courts, and guilt is brought to its just punishment.

250 Each paragraph of the foregoing instructions as numbered extends to the succeeding paragraph number.

The defendant excepted to said instructions and to each of the several paragraphs thereof when given, as follows:

77. To paragraph one and each and every sentence thereof the defendant excepts, because said paragraph is foreign to the question before the jury and to the guilt or innocence of the accused, and, further, that said paragraph tends to direct the attention of the jury to the conviction of the defendant without reference to the importance of guarding the rights of the accused and tends to arouse the feelings of the jury against the defendant.

78. To paragraph 2 and each and every sentence thereof the defendant excepts, because the same is foreign to the questions in issue and tends to the prejudice of the defendant.

79. To paragraph 3 and to each and every sentence thereof the defendant excepts, because the same is a eulogy on the national banking law and an argument against the defendant, in so far as it tends to show that when a national bank fails it is because of the guilty conduct of those in its management. Said paragraph tends to the prejudice of defendant and is an argument to show his guilt outside of the testimony in the case and tends to lay foundations for the guilt of defendant outside of the crime.

80. To paragraph 4 and each and every sentence thereof the defendant excepts, because the same is foreign to the issues presented for trial in this case and has nothing whatever to do with the guilt or innocence of the defendant, nor with the evidence introduced in the case, but presents such foreign and impertinent matter in a way and form tending to the prejudice of the defendant and tending to lead the minds of the jury from the real questions in issue
251 and to a presumption of the guilt of the defendant. The latter clause of the paragraph tends to charge the jury that the report demanded by the comptroller is to be but a copy from the pages of the books on that day, and the officer making the report is bound to give a copy of the books and not the facts as to the condition of the bank.

81. To paragraph 5 and each and every sentence thereof the defendant excepts, because the same tends to direct the jury that the books constituted the only source of information which the comptroller requires to be embodied in the reports and tends to direct them that the facts, as shown by particular books, are to be embodied in the report and not the result of the facts which may be shown by all the books and papers of the bank, and tends also to direct the jury that the duty of the defendant in making reports to the comptroller was to give a copy from the books and not a statement of the actual condition of the bank.

82. To paragraph 6 and each and every sentence thereof the defendant excepts, because the same does not state correctly the fact nor the law as to the reports being published in the same *for* form in which they are made and forwarded to the comptroller, for that such published reports are not required to contain the loans and discounts of paper with two or more individual or firm names or the amount of single-name paper, one person or firm without other security, nor the liabilities of directors, individual and firm, as payers, nor many other facts required to be contained in such reports; and said paragraph also tends to direct the jury that any report other than a true copy from the books is necessarily false and deceitful, and also, by the use of the phrase books of the bank are "doctored," tends to create an impression with the jury that such was the condition of the books of the bank in this case, whereas in this case there was no evidence whatever tend-
252 ing to show anything but correct, reliable, and honest bookkeeping.

83. To paragraph 7 and each and every sentence thereof the defendant excepts, because the same tends to instruct the jury, or create a belief and impression in the minds of the jury, that any report to the comptroller which was not in exact conformity with the books must necessarily be a false report.

In other words, it instructs the jury that the reports should be copies from the footings in the books instead of a statement of the facts showing the condition of the bank.

84. To paragraph 8 and to each and every sentence thereof the defendant excepts for the same reasons as to paragraph 7.

85. To paragraph 10 and to each and every sentence thereof defendant excepts, because the same does not correctly state the charges in the indictment, for that the indictment charges the false entry in respect to the liabilities of directors of said bank upon individual, firm, or corporation paper and not alone upon individual and firm, as stated in said paragraph.

86. To paragraph 11 and to each and every sentence thereof defendant excepts, because said paragraph does not state correctly the charges contained in the indictment in respect of the aggregate of loans and discounts, for that the indictment does not negative the amount of loans and discounts as stated in said report, but avers that the promissory notes and bills of exchange held by the bank did not aggregate that amount.

87. To paragraph 13 and to each and every sentence thereof defendant excepts, because the statement of the charges in the eight-count is incorrect, for that the liability of the directors is stated in the indictment to be in excess of the amount reported, because it is averred in said indictment that the liabilities of directors upon paper signed by them as individuals or as members of firms or corporations was in excess of the amount stated.

253 88. To paragraph 14 and to each and every sentence thereof defendant except-, because the statement of the charge contained — the 10th count is not correctly stated. The indictment charges that the aggregate of the loans and discounts as stated in said report were less than therein stated by averring that the promissory notes and bills of exchange held by the bank on that day were less than said amount, but did not directly negative the truthfulness of said entry or report by stating that the entire loans and discounts did not amount to the sum stated.

89. To paragraph 16 and to each and every sentence thereof defendant excepts, because the court limits the presumption of innocence of the defendant under the law to be only at the beginning or when he starts into the trial, and does not say to the jury that that presumption continues until it is disposed of by the testimony showing beyond a reasonable doubt his guilt. The law as to the presumption of innocence is too limited and is a clear misdirection to the jury of the wholesome provisions of the law in respect to said presumptions. The presumption of innocence remains in aid of any other proofs offered by the defendant to rebut the prosecution's testimony.

90. To paragraph 17 and to each and every sentence thereof the

defendant excepts, because the court fails to state in connection with the five essential facts to be proven that they must be proven to the satisfaction of the jury, and that they must all be so proven as to leave no reasonable doubt in the minds of the jury as to the guilt of the defendant.

91. To paragraph 19 and to each and every sentence thereof defendant excepts, because the same is unintelligible and misleading. There is no predicate or completed sentence under figure 2 of the disputed points for the jury to determine, and the jury cannot understand from the statement under figure 2 any matter to be found by them.

254 92. To paragraph 20 and to each and every sentence thereof defendant excepts, because it recognizes but two classes of entries, to wit, one made by mistake, which is illustrated as being put in the wrong column or an erroneous footing, but does not recognize an honest belief in the classification of the assets or resources and liabilities of the bank. An accused is protected, although he may know the real facts, if he honestly believes such facts require him to classify in one classification, whereas as a matter of law or duty he should have classified them in another. Such honest belief and exercise of judgment if erroneous under this instruction becomes criminal.

93. To paragraph 21 and to each and every sentence thereof defendant objects, because this paragraph lays down the doctrine that if the accused had knowledge of the facts in regard to the existance of the resources and assets of the bank and then under an honest and conscientious belief and judgment that they should be classified in the way he has classified them, that yet he is guilty of an offense, although he reported the real facts as he understood & believed them, though different from the classification in which they were entered in the books of the bank.

94. To paragraph 22 and to each and every sentence thereof defendant objects, because the court in effect thereby instructs the jury that they are not to take into consideration in determining the amount of loans and discounts anything except such as appear under that heading on the bank books.

95. To paragraph 23 and to each and every sentence thereof defendant objects, because it contains the same error as stated in respect of paragraphs 21 and 22, and the illustration is made and the argument against the defendant unjustly assumes that the illustration shows that the entry was false.

255 96. To paragraph 25 and to each and every sentence thereof defendant objects, because it is an argument against defendant and not a statement of the evidence upon the questions involved. The defendant claimed and proved that the investment account was kept as such because the same was temporary, and that the $60,000 of bonds had just been given to replace notes and drafts which up to that time had been carried in loans and discounts, and the bonds were kept in this envelope and class because it was expected they would be disposed of very shortly, as indeed the evidence shows they were in a large part before the next report.

These bonds had been treated in that way by the directors, and their classification under loans and discounts could not be intended to deceive, because coupon bonds secured by mortgage are regarded as preferable to the average loan and discount. The court should have stated the facts shown by the testimony as bearing upon defendant's good faith in making the classification of loans and discounts as he did. The paragraph is an argument against defendant instead of a statement of the facts proved.

97. To paragraph 26 and to each and every sentence thereof defendant objects, because said paragraph states the fact as claimed by the Government and bases thereon an argument against the defendant, but does not state the facts relied on by the defendant in justification of the classification made by him. The only reference to the facts or the claim of the defendant is as follows: "On the other hand you have the reasons as given by defendant. Do these reasons satisfy you?" The court should have given the evidence and claim of defendant as well as the argument against him. The entire paragraph is non-judicial and tended greatly to the prejudice of the defendant. It does not present the case fairly as between the Government and the defendant.

256 98. To paragraph 27 and to each and every sentence thereof defendant excepts, because said paragraph is an argument against the defendant and in no sense a statement of facts which the testimony tended to establish. It is not even a fair argument, for that it does not state the facts which were proved in the case. The defendant himself testified that he had been engaged in banking in Dubuque as an officer of national banks for a period of more than twenty years; that it had been the uniform practice of these banks to regard overdrafts which were arranged for in advance as loans, and he had knowledge that they were so regarded and treated and reported by the First National Bank of Dubuque, by the Commercial National Bank of Dubuque, by the First National Bank of Chicago, by the Union National Bank of Chicago, and by the Third National Bank of Chicago, and that the classification of such overdrafts arranged for, whether secured by collateral or otherwise, were properly recognized, treated, and classed as loans and discounts; that it appears from this record that the defendant offered to show by the officers of the First National Bank of Dubuque, the First National Bank of Chicago, the Union National Bank of Chicago, and the Chicago National bank, and by bank examiners in Chicago that the uniform practice of all national banks was to treat, regard, and report overdrafts arranged for as loans; that in fact they were loans.

99. To paragraph 28 and to each and every sentence thereof defendant objects, because such paragraph is an argument which might well be made by a prosecuting attorney, and is not judicial. It does not state facts as they were proved, nor call the attention of the jury to the facts proven in respect to the claim of the defendant at all, nor state the reason or claim of the defendant or his counsel in connection therewith. The court takes a report printed

in a newspaper in April, 1884, cut from the paper and pasted
257 in a book found among the books of the bank, and against the defendant's objection allowed such newspaper report of the condition of the bank to be introduced in evidence, and then further allows the books of the bank, made more than three years before the reports in controversy in this case and nearly nine years before the case as tried, and draws therefrom an argument unfair and unjust to the defendant, instead of giving to the jury the facts as proven by the respective parties, together with the contention of the respective parties. The instruction directly instructs the jury that the entry is false and does not leave it to them to find.

100. To paragraph 29 and to each and every sentence thereof, because it contains an erroneous assumption of the argument by defendant's counsel, and for the reasons assigned in exceptions to paragraph 28.

101. To paragraph 30 and to each and every sentence thereof, because the paragraph does not state the facts proven in this case, but is only an argument against the defendant, and is based upon the letter from the comptroller addressed not to the defendant, but to the directors of the bank. It seeks to make the letter of the comptroller and the failure of the defendant to comply with it a crime on the part of the defendant, for which he should be punished in this prosecution. It is non-judicial, unjust, and unfair to the defendant, assuming facts which are not proven, and fails to state the reason or testimony of the defendant given by him in respect to the letter of the comptroller.

102. To paragraph 31 and to each and every sentence thereof, because the false entry, the meaning of which had been defined before in the charge by the court, is not a correct definition within the meaning of that term, for that it omits therefrom the idea and thought that if the defendant, in good faith and honestly believing that the overdrafts which had been arranged for as loans might be properly classed as loans and discounts, made such entry,
258 then such entry would not be false.

103. To paragraph 32 and to each and every sentence thereof, because it excludes the usage or practice or custom of other banks, and also excludes the consideration of the defendant's habitual practice for nearly a quarter of a century, and which practice was in accord with the doctrine and laws of such cases, as held by the United States district court, Judge Blodgett presiding, in the case of The United States *vs.* Allen, found in 47th Federal Reporter, on page 696.

104. To paragraph 33 and to each and every sentence thereof, because the same is but an argument against the defendant and directly asserts his guilt without submitting that question to the jury. It further seeks to make the defendant liable for the false entry because he did not report the loans and discounts as much as they in fact were, whereas the accusation in the indictment is that he reported the same in excess of what they were. It further seeks to make and hold the defendant liable for disobedience to the order

of the comptroller issued to the directors and not upon the charge contained in the indictment, which does not refer to said letter or orders of the comptroller or the disobeying of them by the defendant. It entirely omits any reference to the fact that this $45,000 was placed in the control of the committee to be managed by them after it should be determined what depreciated paper in the bank should be withdrawn and the place of which was to be taken up by this $45,000, nor does the court mention in this paragraph the fact that the paper and money which had been contributed towards the $45,000 was not contributed as directed by the comptroller by assessment upon the stockholders, but was voluntarily placed there by the directors, and nothing had been withdrawn from the bank, nor was it in the power of the directors to withdraw the same from the bank, but only to withdraw depreciated paper and place the
259 $45,000 in its stead, and that until such selection was made by the directors the two funds did not belong to the bank, the depreciated paper and the $45,000, for that the $45,000 was put in for the purpose of substituting it in lieu of the depreciated paper, so that it would have been wrongful to have reported both items. Further, the question was whether, the defendant in good faith and honestly believing that said $45,000 ought not to be reported in addition to the depreciated paper for which it was to be substituted, there could have been no guilty purpose nor any intent to deceive or injure or defraud by subtracting the $45,000 from the gross amount of loans and discounts.

105. To paragraph 34 and to each and every sentence thereof defendant excepts, because the first sentence thereof is manifestly as error, because the note or notes depreciated and which were to be withdrawn upon the substitution of the whole $45,000 were still counted among loans and discounts, and therefore the money, when it should be applied to the reducing these loans and discounts, would reduce the amount to that extent, so that the depreciated notes held by the bank and which were to be surrendered in consideration of the payment of the $15,000 cash and the whole was to be arranged together at one time and as the committee should direct. The paragraph is an argument upon a mistaken basis of fact against the defendant and tended greatly to his prejudice. It is not a fair or judicial statement or submission of the testimony to the jury and then a direction to them upon such testimony to find according to their judgment.

106. To paragraph 35 and to each and every sentence thereof defendant excepts, because the court does not state to the jury at all the evidence offered on the part of the defendant upon that point, but simply states that he has offered some testimony, and then goes on with an argument based upon voluntary assump-
260 tions and *and* not upon evidence and against the defendant and to his prejudice. It seeks to arraign the defendant and to induce or direct the jury to his conviction for the crime charged, because he had not complied with the letter of the comptroller, and asserts that the defendant is now estopped from contradicting the letter which he wrote to the comptroller. It entirely overlooks, to

the defendant's prejudice, the fact that instead of swelling the resources or assets of the bank by the deduction of that $45,000 from the loans and discounts, he actually dwarfed the loans and discounts to that extent, thereby manifesting a most unmistakable purpose not to deceive or mislead any one. The court, by ommitting to state the facts favorable to the defendant, unduly prejudiced the jury against the defendant and practically drove them to the finding of the verdict upon the argument of the court, which was erroneously put to them as if it were the law of the case.

107. To paragraph 36 and to each and every sentence thereof defendant excepts, because it manufactures testimony confessedly not introduced in the case, and appeals to their knowledge and as a matter of common observation among men in regard to the manner in which banks are wrecked. No evidence whatever was introduced in respect of these matters. It further calls the attention of the jury to the wrecking of banks and the mismanagement of directors and how such management and wrecking is brought about, whereas in this case there was no question of wrecking or improper loaning, but simply as to the falsity or verity of the entries in the reports. It diverts the attention of the jury from the questions in issue and in such manner as to greatly prejudice the rights of the defendant.

108. To paragraph 37 and to each and every sentence thereof, because the court is in error as to the L. D. Randall paper amounting to $18,000. The evidence showed without conflict that
261 $3,000 of that $18,000 was a loan made by the Commercial National Bank of Dubuque for the Winchester National Bank of Winchester, N. H., and that the note therefor was made by L. D. Randall & Co. to L. D. Randall, and without the indorsement of the Commercial National Bank of Dubuque was sent to the Winchester National bank, so that there was not and never had been any liability on that note of L. D. Randall & Co. or L. D. Randall to the Commercial National Bank of Dubuque, and the same is true in respect to the $5,000 note of Randall & Co., only that note was negotiated for and sent to the First National Bank of McGregor without any indorsement or liability of the Commercial National Bank of Dubuque. Said note was owned by the First National Bank of McGregor and constituted no liability of L. D. Randall to the Commercial National Bank of Dubuque. It neglects to state all the facts upon which the defendant claims that it was not the liability of L. D. Randall to the bank and upon which evidence the defendant acted in making the report referred to, nor does it direct the jury to take into consideration in determining the question the testimony introduced by the defendant bearing upon that question. It fails to state that the defendant testified directly that at the time he thought it was not the liability of L. D. Randall, whereas the court puts the matter upon the hypothesis if he so thought without informing the jury of his testimony on that point it omits to tell the jury that if they found it was an error of judgment only, then the defendant would not be guilty of making a false entry in that particular.

109. To paragraph 38 and to each and every sentence thereof defendant excepts, because the court calls the attention of the jury to evidence respecting the report of May 13, 1887, although the charge in respect to false entries in that report and the evidence respecting the same had been taken from the jury. In this paragraph that evidence is called to the attention of the jury so as to influ-
262 ence them in finding the fact. The paragraph fails to state that the report of August 1, 1887, made the liabilities of directors $69,500 or more than $25,000 in excess of the report of May 13, 1887. It calls the attention of the jury again to the letter of the comptroller, as if such letter would make the defendant guilty or not guilty of a particular fact. It also again mistakenly states the amount of paper held by the Commercial National Bank of Dubuque on L. D. Randall or L. D. Randall & Company. It is an argument against defendant and not a judicial statement of the facts claimed to be proved by either party, and is prejudicial to the defendant.

110. To paragraph 30 and to each and every sentence thereof defendant excepts, because it tells the jury directly that the entry as to the liabilities of directors in each of the reports for August 1 and October 5, 1887, was incorrect and untrue. It instructs the jury directly upon the fact which was for the jury to find. It goes beyond the pale of argument and finds the facts for the jury and so instructs them. It states the effect of the defendant's testimony without stating the facts to which he testified. It states that certain evidences of the defendant as to why the L. D. Randall & Co. paper was not classed as liabilities of directors that that testimony was received to bear upon the question of intent to deceive or defraud persons named in the indictment, but the court afterwards tells the jury that the intent to deceive or defraud is conclusively presumed from the falsity of the entry.

111. To paragraph 40 and to each and every sentence thereof, because it states the evidence of the defendant as by his "sworn testimony" (which must refer to his deposition) incorrectly. It further states, incorrectly, that from that sworn testimony defendant knew that this paper was in fact the paper of J. K. Graves, whereas the sworn testimony referred to only shows that the defendant knew that it was an accommodation note made by
263 the corporation the Iowa City Gas Light Company, and the paper on its face shows that it is the paper of the Iowa City Gas Light Company. It also is incorrect and misleading in stating that there was evidence that J. K. Graves had no authority to sign said paper with the name of said company, whereas there was no evidence upon that question. The articles of incorporation of the Iowa City Gas Light Company were not introduced, nor was there one word of testimony introduced upon the subject of the right of the president of the Iowa City Gas Light Company to make accommodation paper, and nothing shown that it was not authorized by the board of directors of the Iowa City Gas Light Company.

112. To paragraph 41 and to each and every sentence thereof

defendant objects, because it repeats the errors which we have heretofore pointed out in regard to the August report.

113. To paragraph 42 and to each and every sentence thereof defendant objects, because the same is misleading and not applicable to the case. The charge against the defendant in the indictment and for which he was upon trial was of making a false entry with a particular intent. Three several particular intents are stated in the indictment. The law does never presume, simply from the doing of an act not unlawful in itself, a particular intent, the intent required by the statute to make it an offense. There must be proof of the specific intent charged, and without such proof, direct or indirect, the defendant cannot properly be found guilty as charged.

The illustrations used were inapplicable and misleading.

264 114. To paragraph 44 and to each and every sentence thereof defendant excepts, because it charges in substance that the making of a false entry in a report to the comptroller is of itself evidence of the intent specified in the indictment and shuts out all existence of good faith and mistaken judgment in the classification. It assumes that the false entry was made by the defendant wilfully and was put out with the design to allay suspicion and with the design to induce faith and trust in his bank and thereon assumes the intent. Such language was misleading to the jury and prejudicial to the defendant.

115. To paragraph 45 and to each and every sentence thereof defendant excepts, because it is misleading and prejudicial to the defendant. It puts before the jury several hypotheses of fact, no one of which is applicable to this case, and in respect to no one of which is there any evidence introduced in this case or charge made in the indictment. It associates conduct set forth with the purpose of wrecking a bank, which could not but be prejudicial to the defendant.

116. To paragraph 46 and to each and every sentence thereof, because it authorizes the jury to find and directs that they may find the specific intent charged in the indictment from the single fact of the falsity of the report alone, whereas the law requires that there shall be proven not only the fact but the particular intent charged before a jury can find the specific intent charged in the indictment. The crime charged consists of two things: first, the false entry, and, second, the intent to deceive, to injure, or to defraud. The proof of one branch or element of the crime is not sufficient, but proof of both must be made. The instruction embraced in paragraph 46 makes the proof of the falsity of the entry the only thing necessary to be shown for the conviction of the defendant.

265 It entirely ignores the presumption of innocence and violates the well-settled rules of law respecting offences which only become such by reason of the specific intent with which the prohibited act is done.

117. To paragraph 47 and to each and every sentence thereof defendant excepts, because of the same reasons assigned to the last preceding paragraph 46, and, further, that the reference to deceiving and defrauding having been "adroitly planned" or "skillfully

performed" or "bunglingly carried into execution" have no place whatever with reference to the evidence or accusation in this case and tended to the prejudice of the defendant.

118. To paragraph 48 and to each and every sentence thereof defendant excepts, because of the same reasons and grounds and matters stated as applied to paragraphs 47 and 46 preceding, and, further, it ignores entirely the testimony of the defendant upon the stand that he had no intention to deceive and the demeanor of the defendant in connection with his testimony, as well as the presumption of innocence.

119. To paragraph 50 and to each and every sentence thereof defendant excepts, because this paragraph of instructions limits the presumption of innocence in favor of the defendant to the commencement of the trial and does not instruct the jury that said presumption continues throughout the trial until the evidence shall satisfy them beyond a reasonable doubt of the guilt of the defendant.

120. To paragraph 53 and to each and every sentence thereof defendant excepts, because it tells the jury that the law sends the testimony of the defendant to the jury charged with whatever may properly attach to the testimony because of his interest in the result of the case, whereas the law does not send the testimony to the jury charged with anything other than that which relates to every other witness. The defendant has a right to credibility like any other witness from the manner of his testifying the straightforward and probably frankness; and, like any other witness, his testimony is to be weighed and considered in the light of the interest in the case, his relations to the case and to the questions involved in it; but the law itself draws no distinction between the defendant as a witness and any other witness. Again, the instruction says: "And when he does so testify the law send- his testimony to you charged with his interest, and you are to examine and test it accordingly." To this the same objection as above stated applies. It tells the jury when they may cast aside and wholly reject the testimony of the defendant, but it nowhere tells the jury that they may judge of the defendant's testimony by his frankness as a witness on the stand or its opposite, by his demeanor or the inherent verity which they may find in his testimony and its concurrence with the books and other testimony in the case; in other words, the instruction is one-sided, looking only to that which is against the defendant, but stating no fact which might be in his favor or his testimony and which might be so construed by the jury.

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121. To paragraph 54 and to each and every sentence thereof defendant objects, because the court does not tell the jury what part of the instructions he is giving them is binding upon them as law, as contradistinguished from those which are merely logic or argument, but leaves the jury to understand that all he has said is binding upon them and should control them, as well the fact which he discusses and finds as the propositions of law which he states. It calls the attention of the jury to the relation of the witnesses to the

defendant as a ground for disregarding them, but nowhere tells the jury that any witnesses who have manifested a bias or hostility to the defendant that these facts are to be considered by them in determining the weight of the testimony of such witnesses against the defendant.

267–271 122. To paragraph 55 and to each and every sentence thereof defendant excepts, because this instruction tells the jury that the Government does not ask the conviction of any man who is not proven guilty of the crime of which he is charged, and yet the Government, by its prosecuting attorney, ask the conviction of this defendant, and the charge and argument of the court indicates that the Government would not be there prosecuting unless he were guilty.

Finally, the defendant, by his counsel, objects to the entire charge as a whole as being an argument against the defendant rather than a judicial statement of the facts relied upon by the Government and defendant and the law as applicable thereto; that the law and fact and argument are so interwoven and inseparable *as* that the jury could not determine that by which they were bound from that which they were to consider and determine for themselves. It is prejudicial to the defendant, misleading to the jury, and tended directly to secure the verdict of guilty, and the rights of the defendant were in no sense protected by it.

(Here follows a copy of the instructions asked by defendant and refused by the court; which instructions are embraced in the assignment of errors hereinbefore set out in full.)

272 It is certified that in the assignment of errors and exceptions to the charge of the court to the jury in the original bill of exceptions as originally prepared by counsel for plaintiff in error and tendered to the court the charge had been by said counsel divided up into paragraphs without consulting the court as to the manner of said divisions; that the exceptions to each paragraph of the charge followed the paragraph to which the exceptions related as said paragraphs had been so made by counsel; that the court refused to accept the paragraphs as so by counsel made and insisted on the charge, if paragraphed, must be divided up so as to leave each completed topic in a paragraph to itself instead of having the paragraphs divide up topics inharmoniously and in places separate a material part from its context, and the court divided up the charge into topical paragraphs and submitted same to counsel for defendant; that said counsel then proposed to erase from original bill the exceptions from the charge and leave said charge to stand as a whole, with the exceptions to follow at the close of charge, but asked to be permitted, for their own convenience, to have the original paragraphs as made and numbered permitted to stand in said charge, to which the court consented, and that thereupon such exceptions were each and every of them erased so as to leave the charge one continuous whole, leaving, however, the paragraph numbers therein as they were numbered by the counsel for the plaintiff in error, and the several exceptions to the charge were inserted after the charge in their numerical order, and this certificate

is made in order that the same may be shown and made a part of the record in the case.

273 The foregoing bill of exceptions is a correct and complete statement and record of the evidence given, offered, and rejected, objections made to and exceptions taken, and of the instructions and proceedings had on trial of this cause, so far as relates to the exceptions and errors assigned; and forasmuch as the facts aforesaid and the decision of the court thereon and the other matters stated and shown in the foregoing do not otherwise appear of record, the defendant prays that this his bill of exceptions may be allowed, signed, and sealed and made a part of the record in said case, which is done.

JOHN S. WOOLSON.
District Judge.

Feb'y 2, 1893.

The above bill of exceptions is correct.
Jan'y 28, '93.

M. D. O'CONNELL, *U. S. Att'y.*
J. B. POWERS, *Def't's Att'y.*

(Indorsed:) No. 3302. United States of America *vs.* Rufus E. Graves. Bill of exceptions. Filed February 4, 1893. A. J. Van Duzee, clerk.

274 And afterwards, to wit, on the 7th day of January, A. D. 1893, there was filed in the office of the clerk of said court, in said cause, the order of Hon. Jno. S. Woolson, district judge, the presiding judge in the trial of said cause, enlarging the time in which to docket said cause in the U. S. Supreme Court; which order is in words and figures following, to wit:

In U. S. District Court, Northern District of Iowa, Eastern Division.

UNITED STATES
vs.
RUFUS E. GRAVES.

DUBUQUE, IOWA, *Jan'y* 7, 1893.

Upon application of defendant for an extension of time for docketing this case and filing the record therein in the office of the clerk of the Supreme Court of the United States, under rule 9 of the rules of said Supreme Court, M. D. O'Connell, district att'y, and J. B. Powers, Esq., of counsel for defendant, being present, it is now and hereby ordered that the time by rule 8 of said rules prescribed for the return day on appeal heretofore allowed herein be, and the same is now and hereby, enlarged by the undersigned judge having signed the citation herein for the period of thirty days, to wit, to and including February 19, 1893, good cause therefor being shown.

Ordered, farther, that this order of enlargement be filed with the clerk of the said court for said northern district of Iowa.

JNO. S. WOOLSON,
District Judge.

(Endorsed:) No. 3302. United States of America *vs.* Rufus E. Graves. Order enlarging time for filing transcript in Supreme Court. Filed January 7, 1893. A. J. Van Duzee, clerk.

And on the 7th day of January, A. D. 1893, the same being the 29th day of the regular December term, A. D. 1892, of said court, the following proceedings were had in said cause and entered of record on page 594 of Minutes H of records of said court, to wit:

UNITED STATES OF AMERICA
vs.
RUFUS E. GRAVES. } No. 3302. Indictment.

Now, this 7th day of January, 1893, for good cause showed to the court, the time for completing and filing bill of exceptions in this cause is hereby extended to Feb'y 6, 1893.

275 UNITED STATES OF AMERICA, }
Northern District of Iowa, } *ss:*

I, A. J. Van Duzee, clerk of the district court of the United States in and for the northern district of Iowa, do hereby certify that the foregoing is a full, true, and perfect transcript of the record and proceedings and assignment of errors in the case of The United States of America, plaintiff, *vs.* Rufus E. Graves, defendant, No. 3302, criminal, as fully as the same remain on file and of record in my office.

Seal District Court U. S., Northern District of Iowa, Dubuque.

In testimony whereof I have hereunto set my hand and affix- the seal of said court, at Dubuque, in said district, this 11th day of February, A. D. 1893.

A. J. VAN DUZEE,
Clerk U. S. District —, Northern District of Iowa.

276 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the district court of the United States for the eastern division of the northern judicial district of Iowa, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you, at the December term, 1892, thereof, between The United States of America, as plaintiff, and Rufus E. Graves, as defendant, a manifest error hath happened, to the great damage and injury of the said Rufus E. Graves, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do com-

mand you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the said record and proceedings aforesaid at the city of Washington and filed in the office of the clerk of the Supreme Court of the United States on or before the twentieth day of January, 1893, to the end that, the record and proceedings aforesaid being inspected, the Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this twenty-first day of December, in the year of our Lord one thousand eight hundred and ninety-two.

Issued at office, in the city of Dubuque, with the seal of the district court of the United States for the eastern division of the northern district of Iowa, dated as aforesaid.

A. J. VAN DUZEE,
Clerk District Court United States, Eastern Division of the Northern District of Iowa.

Allowed by—
JNO. S. WOOLSON, *Judge.*

[Endorsed:] No. 3302. United States district court, eastern division of the northern district of Iowa. The United States of America *vs.* Rufus E. Graves. Writ of error to the district court of the United States for the eastern division of the northern judicial district of Iowa. Filed 21st day of December, 1892. A. J. Van Duzee, clerk.

277 THE UNITED STATES OF AMERICA:

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the day this citation bears date, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the eastern division of the northern district of Iowa, wherein Rufus E. Graves — plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable John S. Woolson, judge of the district court of the United States for the northern district of Iowa, this twenty-first day of December, in the year of our Lord one thousand eight hundred and ninety-two.

JNO. S. WOOLSON,
United States District Judge, Southern District of Iowa, Designated & Sitting as U. S. District Judge for the Northern District of Iowa.

278 [Endorsed:] No. 3302. United States circuit court, eastern division of the northern district of Iowa. The United States of America *vs.* Rufus E. Graves. Citation. Filed 21st day of December, 1892. A. J. Van Duzee, clerk.

UNITED STATES OF AMERICA, }
Northern Dist. of Iowa. }

Service of the within citation is hereby accepted and admitted this 21st day of December, 1892, at Dubuque, Ia.

MAURICE D. O'CONNELL,
United States Attorney for the Northern Dist. of Iowa.

279 UNITED STATES OF AMERICA, }
Northern District of Iowa, } *ss:*

I, A. J. Van Duzee, clerk of the district court of the United States in and for the northern district of Iowa, do hereby certify and return that the writ of error which is hereto attached was served and filed in my office at Dubuque on the 21st day of December, A. D. 1892, and a copy thereof at the same time lodged in my office; and I now return said writ of error, and annexed thereto and hereto attached are authenticated copies of the record and of the assignment of errors in the cause mentioned in said writ of error, and the following-named papers filed therein, to wit, the citation and proof of service thereof.

Seal District Court U. S., Northern District of Iowa, Dubuque.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Dubuque, in said district, the 11th day of February, A. D. 1893.

A. J. VAN DUZEE,
Clerk U. S. District Court, Northern District of Iowa.

280 In the Supreme Court of the United States.

RUFUS E. GRAVES, Plaintiff in Error, }
v. } No. 31.
THE UNITED STATES. }

Upon request of counsel for the plaintiff in error, which request is made on account of the latter's poverty, it is hereby stipulated and agreed that the following omissions and alterations shall be made in printing the transcript of record:

1. Omit all of the indictment after the caption itself (on page 1 of the transcript), except the fourth, fifth, seventh, eighth, ninth, and tenth counts, no evidence having been offered respecting the other counts and no questions arising thereon.

2. Omit from the top of page 31 to the end of the caption on page 48, inclusive, and in lieu thereof insert the statement hereto annexed and marked "A."

3. Omit the paragraphs of the motion in arrest of judgment

(p. 48, 49) which are numbered "3rd," "8th," "9th," "II," "V," "X," "XI," "XII," and "XIII," said paragraphs relating to counts in the indictment which have been omitted as aforesaid.

281 4. Omit from the top of page 53 to the end of the caption on page 55, inclusive, and in lieu thereof insert the statement hereto annexed and marked "B."

5. Omit from the assignment of errors (p. 56, &c.) the paragraphs numbered 2 to 19, inclusive, 22 to 40, inclusive, 42, 44, 47, 57, 68 to 72, inclusive, and 77 to 123, inclusive, and in lieu of the last-named paragraphs insert the statement hereto annexed and marked "C."

6. Omit all of assignment 134 (p. 77) after the words "is as follows, to wit," and in lieu thereof insert the words: ("This motion is not set forth in full here, because the material parts thereof have hereinbefore been inserted.")

7. Omit from the top of page 86 to the 18th line of page 101, inclusive, and in lieu thereof insert the statement hereto annexed and marked "D."

8. Omit pages 110 (after ninth line) to 196, inclusive, and in lieu thereof insert the statement hereto annexed and marked "E."

9. Omit pages 197 and 198, being the report to the comptroller of the condition of the bank on May 13, 1887, contained in the first count of the indictment and withdrawn from the jury.

10. Omit pages 268 to 271, inclusive, and insert in lieu thereof the words: "Here follows a copy of the instructions asked by
282 defendant and refused by the court, which instructions are embraced in the assignment of errors hereinbefore set out in full."

July 1, 1896.

HOLMES CONRAD,
Solicitor General.
C. C. COLE,
Counsel for Plaintiff in Error.

283 [Endorsed:] Case No. 15,267. Supreme Court U. S., October term, 1896. Term No., 31. Rufus E. Graves, pl'ff in error, *vs.* The United States. Stipulation as to printing record. Filed July 2, 1896.

Endorsed on cover: Case No. 15,267. N. Iowa D. C. U. S. Term No., 31. Rufus E. Graves, plaintiff in error, *vs.* The United States. Filed February 23d, 1893.

165-323

No 1297

Office Supreme Court U. S.
FILED.
MAR 6 1893
JAMES H. McKENNEY,
CLERK.

165-323

In the Supreme Court of the United States.

OCTOBER TERM, 1892.

RUFUS E. GRAVES, PLAINTIFF IN ERROR,
vs.
THE UNITED STATES.
} No. 15267.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

MOTION TO ADVANCE.

165-323

In the Supreme Court of the United States.

OCTOBER TERM, 1892.

RUFUS E. GRAVES, PLAINTIFF IN ERROR,
vs.
THE UNITED STATES. } No. 15267.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

MOTION TO ADVANCE.

The plaintiff in error, Rufus E. Graves, moves the court to advance this cause for hearing at such early day of the October term, 1893, as the court shall designate.

In support of such motion the plaintiff in error suggests to the Court that he desires an early hearing and disposition of the case; that one C. H. Harris, who was cashier of the Commercial National Bank at Dubuque, and who signed the same reports upon which the plaintiff in error was indicted, is also indicted, and his case is still pending and undisposed of in the District Court of the United States in and for the Northern District of Iowa at Dubuque; that the questions involved in said case against Harris are identical with the questions involved in this case, as against plaintiff in error. That it is desired that the questions in this case be settled and determined before the case against the said Harris shall be tried, and to that end this motion is made in order to avoid the expense of the trial of said Harris, in case the plaintiff in error shall be successful in this appeal.

C. C. COLE,
Attorney for Plaintiff in Error.

165323

Office Supreme Court, U. S.
FILED.
OCT 9 1896
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 31.

RUFUS E. GRAVES, Plaintiff in Error,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

BRIEF FOR PLAINTIFF IN ERROR.

C. C. Cole, of Des Moines, Iowa,
of Counsel for Plaintiff in Error.

DES MOINES PRINTING COMPANY, DES MOINES, IOWA.

Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 31.

RUFUS E. GRAVES, Plaintiff in Error,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

BRIEF FOR PLAINTIFF IN ERROR.

C. C. Cole, of Counsel for Plaintiff in Error.

STATEMENT OF THE CASE.

This case is here upon writ of error from the District Court of the United States, for the Northern District of Iowa, Hon. John S. Woolson, Judge.

An indictment under section 5209 of the Revised Statutes of the United States was returned by the grand jury at the April Term, 1890, of said District Court, against the plaintiff in error, in sixteen different counts, charging him as the president and director of the Commercial National Bank of Dubuque, Iowa, with having made false entries in certain reports of the association to the Comptroller of Currency with intent to injure, defraud, etc.

On December 7th, 1892, the cause came on regularly for trial, and the taking of the testimony occupied nine days. The court before submitting the cause to the jury upon instructions, struck out all the counts in the indictment except the 4th, 5th, 7th, 8th, 9th, and 10th, and withdrew from the consideration of the jury all of the counts except the said six counts. The Fourth and Seventh counts each charge the falsity of the report of August 5th and

October 5th, 1887, to consist in the statement of the overdrafts at a less sum than they should have been stated. The Fifth and Eighth Counts charge the falsity of the reports of date August 5th and October 5th to be in stating the liabilities of the directors of the bank in a less sum than they should have been stated. The Ninth and Tenth Counts charge the falsity of the reports of each August 5th and October 5th, 1887, to consist in stating the loans and discounts at a greater sum than they should have been stated.

The issues were narrowed, by the withdrawal of the ten counts, to six single and definite propositions of fact; two of them related to overdrafts; two of them to liabilities of directors, and two of them to the amount of loans and discounts. It is worthy of note here, as an undisputed fact, that there is no claim made by the Government nor any evidence tending to show, any falsity or error in the aggregate of the assets of the bank at the dates of either of the two reports involved in the six counts, nor indeed any of the other counts. That is to say, the amount of the overdrafts and the amount of loans and discounts together, aggregate the true and correct amounts of those two items combined. The claim is, that the overdrafts were stated less than they were, while the loans and discounts were stated more than they were, in fact. The excess of loans and discounts, as claimed by the Government, was just exactly equal to the diminution of the amount of overdrafts, as claimed by the Government. In other words, the reports placed certain of the items of overdrafts along with and as part of the loans and discounts, whereby there was omitted from the classification of the overdrafts these items included in the loans and discounts, thus leaving the reports of the overdrafts, precisely the same less in amount, as the loans and discounts were in excess of the amount as claimed by the Government. To restate the proposition concisely, the Government claims a false and erroneous classification of the assets; that certain of the items classed by the reports as loans and discounts, should have been classed as overdrafts—an error in classification.

When the indictment was returned into court, the defendant entered his appearance thereto; a formal plea of

"not guilty" was filed and the defendant admitted to bail. On the day before the cause was set for trial, the defendant moved the court for leave to withdraw his plea of not guilty and to file a motion to quash and a demurrer to the indictment; suggesting that when the plea of not guilty was entered, the right to withdraw it and to assail the indictment by motion or demurrer, was expressly given, This motion for leave was accompanied with the motion to quash and the demurrer. The motion was overruled and the leave denied. This denial was accompanied with the following order entered of record (11),—"but the defendant however, is expressly given the right to avail himself, during the introduction of evidence upon the trial of said cause and upon motion in arrest of judgment, should such motion be filed, of all the points raised by such demurrer and motion to quash."

During the progress of the trial, numerous objections to questions and answers were made, and afterwards, by motion in arrest, the same objections were made as by the motion to quash and the demurrer. Such objections and motion applied to several of the ten counts withdrawn from the jury as well as to the Fifth, Eighth, Ninth and Tenth Counts.

During the trial also, numerous objections to evidence were made by counsel for the plaintiff in error, and exceptions taken to the rulings of the court, upon which errors have been assigned, and to some of which the attention of the court will be called in the argument. We deem these preliminary statements of fact, sufficient to call the attention of the court and direct the judicial mind to the several propositions which we shall hereinafter discuss, and to which we may add further facts necessary to render them perspicuous.

The jury on the 17th day of December, 1892, returned into court a verdict, finding the defendant guilty as charged in counts No. 4, 5, 7, 8, 9, and 10 in the indictment. The jury were thereupon polled and discharged; following which the defendant filed his motions in arrest of judgment and for new trial, etc., which were overruled and judgment was pronounced upon the verdict, committing the plaintiff in error to the penitentiary at Anamosa, Iowa, for the term of five years, and adjudging that he pay the costs of the pro-

secution amounting to Seven Hundred thirty-nine dollars and sixty-eight cents. The defendant at once assigned errors and thereon procured his writ of error, and upon filing a bond, in the penalty of ten thousand dollars, was granted a supersedeas. A bill of exceptions was filed, the writ of error was allowed, issued and proper citation served.

A motion by the plaintiff in error, was made at the October Term 1892 of his court, to advance the cause; which was overuled by the court. For the sake of relieving the plaintiff in error from the expense in printing, as well as to relieve the court and counsel from the burden of a very large record, the Solicitor General and the counsel for plaintiff in error, filed a stipulation with request to the Clerk to omit in printing, a large part (much more than half) of the record. The entire record covers one hundred and twenty-nine pages, of which the charge of the court occupies twenty-seven pages and objections to the charge eleven pages — the charge and objections thereto, constituting about one third of the entire record now presented; leaving the record, proper, about eighty-five pages, upon which arise the following, among other questions.

ARGUMENT.

I.

The Fifth and Eighth Counts, each of which relates to the falsity of the statement as to liabilities of directors, are insufficient; and the court erred in overuling the motion in arrest of judgment.

The Fifth Count relates to the report of date August 5, 1887. It charges that "in said report appeared an entry in the words and figures following, to-wit; Liabilities of directors (individual and firm) as payers $69,500.00; which said entry so made as aforesaid in said report, did in effect and substance declare that the Commercial National Bank of Dubuque aforesaid had on hand at the close of business on the first day of August, A. D. 1887, divers promissory notes and bills of exchange and other obligations or evidence of indebtedness which were then and there unpaid and which did not exceed the aggregate amount of sixty-nine thousand five hundred dollars and no cents, which said notes, bills of exchange, obligations, or evidence of indebt-

edness were either made, drawn, or accepted by persons who were then and there directors of said banking association or by firms *or corporations* composed in part of such directors, and which said notes, bills of exchange, obligations, or evidences of indebtedness had been discounted or purchased by the Commercial National Bank of Dubuque aforesaid and were then and there held and owned by said banking association." The assignment of falsity is, that the aggregate liabilities of the directors, was greater than the sum stated in the said report.

The language of the Eighth Count is identical, save with respect to the date of the report and the amount of liabilities of directors; and the assignment of falsity is the same.

The precise point which counsel for plaintiff in error now and here desires to present to to the court is this, to-wit: The indictment charges that "in said report appeared an entry in the words and figures following, to-wit: "Liabilities of directors, (individual and firm), as payers;" while the falsity thereof is assigned in the fact that "the evidences of indebtedness were either made, drawn, or accepted by persons who were then and there directors of said banking association, or by firms or *corporations* composed in part of such directors, etc." The court will see that the report itself was limited to the liabilities of directors (individual and firm) as payers; while the statement of its effect, and the assignment of falsity embrace liabilities of directors as individuals, as members of firms, and as members of "corporations composed in part of such directors." The report states the liabities, to-wit: Individual liability and firm liability; while the assignment of falsity, embraces the liabilities of individuals and firms and of "corporations composed in part of such directors." The assignment of falsity does not establish any falsity at all; for that it may well be true that the liabilities of the directors, as individuals, as members of firms, and as members of corporations, may have been much more. If the latter statement be fully true, it does not negative the first statement contained in the report. The statement of falsity introduces a third class of persons liable to the bank, and hence cannot constitute a negative of the facts stated respecting the other two

classes. In other words the report affirmed that the liabilities of the directors, individually and as members of firms, was a certain amount; while the indictment, by way of assignment of falsity, alleges that the liabilities of directors as individuals, as members of firms, and of corporations composed in part of such directors, were greater than stated. The report states that the liabilities of A and of B and C amount to sixty-nine thousand five hundred dollars. The averment of the indictment is, that such statement is false, because the liabilities of A, of B and C and of D, E and F are greater than sixty-nine thousand five hundred dollars. In other words, there is no charge of falsity made in the Fifth Count of the indictment, and hence there was no issue to be tried or to which any evidence could be addressed.

The same is true, precisely, in respect of the charge contained in the Eighth Count.

The report itself, in its statement of liabilities of directors, does not purport to include corporations composed in part of said directors, nor does it include any corporations whatever. Indeed it could not include the liability of corporations composed in part of said directors; nor could the statute or the regulation of the Comptroller of the Currency, contemplate that liabilities of corporations should be included in the statement respecting the liabilities of directors of the bank. And this, because it would be utterly impossible, in the ordinary course of business, for the officers of the bank to know, either as to the corporations included or as to the liabilities of such corporations. A director of the bank may have been a member of or even a director in a railroad corporation, and the fact that he was such stock holder or a member of such corporation or that he was a director therein, might not and need not have been known to the officers of the bank who made the report. And even the director of the bank who was also a director of the railroad corporation, might himself not have had any knowledge whatever, even if it was so, that the railroad company had negotiated a loan with the bank. The business of the railroad company need not and probably would not be known to a director of such railroad company, since directors have nothing whatever to do, as a rule, relating to the

detail of the management of the finances of such railroad corporations. Even such director in a railway corporation, might himself make the false report as to the liabilities of corporations of which he composed a part, without having any knowledge that the railroad company was a borrower at the bank. Where a director of the bank was simply a stockholder in one or more of the many mercantile and manufacturing corporations, doing business in the same city as that wherein the bank is located, the corporation of which he composed a part or some one of them, if he were in several, might have business with the bank and be its debtor without any knowledge on the part of such director.

Indeed, that the liability of corporations composed in part of the directors of the bank was not intended to be included in the report, is further manifest by the fact that members of corporations are not, under our general incorporation laws, personally liable for the debts of the corporation, except in peculiar and special circumstances growing out of the non-payment of stock subscribed for by them, or of wrongful management of such corporations. It is, therefore, quite immaterial, as a matter of fact, whether a director or officer of the bank is a member of a corporation having the liability to the bank; because such liability of the corporation does not ordinarily imply that the director of the bank, who is a member of such corporation, is liable for its obligations to the bank or to any other individuality. To say, therefore, that in reporting the liabilities of directors (individual or firm) either in law or fact, embraces the liabilities of corporations composed in part of such directors, is to pervert the law and falsify the fact. For these and many other reasons it is manifest, beyond a peradventure, that the law did not contemplate that in making reports to the Comptroller, by a National Bank, of the liabilities of its directors, there should be included the liabilities of corporations of which such directors composed a part.

The following quotations and references sufficiently indicate the trend of the law upon the points discussed under this division of the argument and also under each of the two following divisions, towit; II and III.

A setting out of the substance and effect of the matter

sworn to, which varies the sense thereof, will not be accepted as its substance or effect.

2 Bishops New Criminal Procedure, section 916.

The State v. Tappan 1 Fost. (N. H.) 56.

The State v. Mumford 1 Devereux Law (N. C.) 519.

Reg. v. Gravey 1 Cox (C. C.) 111.

In Rex v. Taylor 1 Campel. 404. The indictment set out the oath that a certain person "made an assault upon her the said Mary Ann Taylor with an umbrella, and at the same *time* threatened to shoot her with a pistol;" whereas, the oath, when presented, was in the precise language as follows: "made an assault upon her the said Mary Ann Taylor with an umbrella and at the same threatened to shoot her," etc., without mentioning the word "time." Lord Ellenborough said,

"I am of the opinion that the words ought to be set out exactly as sworn, and that if there be any mistake or ambiguity, that can only be remedied by an innuendo. Here the indictment may have stated "at the same (meaning thereby, at the same time) threatened, etc.," but the information might have meant at the same place: and it is quite impossible to say that the allegation in the indictment is supported by the information given in evidence. The defendant acquitted."

In Reg. v. Whitehouse 3 Cox (C. C.) 86, the indictment stated that Ruben Whitehouse falsely swore that "he was in the bar of the house of John Bailey on the 15th day of February last, from between the hours of six o'clock and seven o'clock in the evening of the said last mentioned day, until nine o'clock in the evening of the said last mentioned day, and that he, the said Ruben Whitehouse did not then and there play at cards at all." The perjury assigned, was that "the said Ruben Whitehouse did then and there, (to-wit), in the said bar of said house and premises of the said John Bailey on the said 15th day of February last, and between the hours of six o'clock in the evening of the said last mentioned day: and eight o'clock in the evening of the said last mentioned day, play at a certain game of cards, etc."

Rolfe, B.—"The indictment is bad, as it seems to me. The defendant may have played at five minutes past six, and yet not have played from between six and seven until nine; for the words "from between six and seven," may be

any time short of seven, five minutes or five seconds to that hour. The indictment cannot be read as avering that the defendant swore that he did not play at any time during that evening, but merely that he did not play at the particular period of the evening, namely, from some period before seven until nine. That might be perfectly true, and yet he may have played as is assigned in the indictment between six and eight. Defendant was discharged."

3 Russel on Crimes. 70, 71.

In Thomas v. State 54 Arkansas 584. The defendant was indicted for perjury in swearing to an account and stating "that the item of said coffin furnished, as alleged in said account, was just and true." The negation thereof and assignment of perjury thereon, was that the defendant "did not make, furnish and supply said coffin." *Held*, the indictment was not good. This case is very much in point upon the case at bar. The court in the course of its opinion uses this language, "but it alleged that the defendant did not make, furnish and supply," this is equivalent to saying that he did not make and furnish. And this form of denial, according to a rule of construction, which has often been applied to pleadings in civil proceedings, is by implication an admission that the coffin was furnished.

Schatcel v. Insurance Co. 22 Wis. 412.
Baker v. Bailey 16 Barbour 54.
Kelly v. Shirley 43 Cal. 369.
Larney v. Mooney 50 Cal. 610.

(II.)

There is no false statement of resources set out in the indictment with respect to "loans and discoounts" as assigned in counts 9 and 10. The court erred thereon in admitting and excluding evidence, and in its charge to the jury; and in overruling the motion in arrest of judgment.

The indictment, in the Ninth Count, charges the false entry in the report of August 5th, to consist in the entry then and there made under the head of "Resources. 1. Loans and discounts (see schedule) $551,048.60." The indictment then states the entry so made as aforesaid in said

report and under the heading of "Resources," did in substance and effect declare as follows, to-wit: "Entry No. 1. Loans and discounts $551,048.60. Did in substance and effect declare that the Commercial National Bank of Dubuque aforesaid, had on hand at the close of business on said 1st day of August A. D., 1887, divers promissory notes and bills of exchange made and executed by divers persons, firms, and corporations; which said promissory notes and bills of exchange were then and there unpaid. * * * * Said entry so made as aforesaid was then and there false in this, to-wit: That the Commercial National Bank of Dubuque aforesaid was not then and there the true and lawful owner and holder of unpaid promissory notes and bills of exchange which were then and there a resource of said bank to the amount" as stated; but the same was many thousand dollars less.

Here it will be observed that the report itself contained the entry under the head of "Resources No. 1. Loans and discounts (see schedule] $551,048.60." The assignment of falsity is, "that the Commercial National Bank of Dubuque aforesaid was not then and there the true and lawful owner and holder of unpaid promissory notes and bills of exchange which were then and there a resource of said bank to the amount of $551,048.60" as stated; but the same was many thousand dollars less.

The report did not undertake to define how said loans and discounts were evidenced; nor did it state that any part of them was promissory notes or bills of exchange; but the designation was simply "loans and discounts." The assignment therefore of falsity, that the bank did not then own and hold unpaid promissory notes and bills of exchange to the amount stated, is no contradiction of the statement in the report; because the report itself said nothing respecting the manner or form in which the loans and discounts were evidenced, but only that the amount stated was the true amount. It is not unusual, within the experience and observation of the writer of this argument, and possibly of each member of this court, that banks make loans upon other security than promissory notes and bills of exchange. That loans are very often and daily made upon collaterals to which the banker pins a memorandum, often in pencil, indicating, at least, and sometimes expressing in full, the

agreement under which such collateral was taken. It may be that the collateral was a United States Government bond or a municipal bond, or city warrants, or other Commercial instrument other than promissory notes or bills of exchange, upon which the loan was made. Such transactions being frequent with banks, and in some localities of almost daily occurence; it will readily be seen that there is no necessary conflict between the statement in the report, that the "loans and discounts" of the bank amounted to a certain sum, and a statment that the bank, on that day, was not the lawful owner and holder of unpaid promissory notes and bills of exchange to the amount stated. There is indeed no real inconsistency between the two statements; for that the bank may have held unpaid promissory notes and bills of exchange for the major part of the sum stated, and collaterals in the form of bonds, warrants, or other evidence of indebtedness for the balance. I need not enumerate other securities in the way of diamonds or other precious stones or watches or other valuable gold jewelry which are sometimes taken by National banks, (and very often by other banks), as collateral for some amount, very much less than the real value of the article left as such security. It is enough to refer to other commercial securities than promissory notes and bills of exchange, which are often received as collateral for loans, to show clearly and conclusively that there is no assignment of falsity set forth in the indictment. Every paragraph of the indictment may be conceded to be fully true, and yet the defendant not guilty of any offense known to the law.

This test, therefore, shows that so far as respects the 9th and 10th counts of the indictment, no offense whatever is charged; and therefore that it was error to put the defendent on trial on such indictment. It was also error to admit evidence respecting loans and discounts, and was alike error to overrule the motion in arrest of judgement. By reference to record page 12, paragraph 6, it will be seen that this precise point was made in the motion for arrest, and directly and distinctly presented to the court therein. The paragraph to which we refer is in the words following: "That said ninth count of the indictment fails to show on its face that the amount of loans and discounts in said report was falsely stated to be $551,048.60; because said count nowhere states that the loans and discounts were, in fact,

less than the amount stated; but simply charges that the amount of promissory notes and bills of exchange, which were then and there unpaid, and the resources of said bank were less than said amount, and does not charge that there were not any other obligations which might be properly classed as loans and discounts owned and held by said bank, and therefore wholly fails to show or charge that the loans and discounts were falsely reported. [Rec. 13, Par. VIII.]

We, therefore confidently submit that this error of the court entitles the defendant to a reversal of judgment and sentence rendered against him by the court below.

See authorities cited under division I.

III.

There was no false statement of resources with respect to overdrafts, as assigned in the 4th and 7th counts. The court erred thereon in admitting and excluding evidence, and in its charge to the jury.

The charge in each of said counts, is, that the aggregate sums withdrawn from the bank by divers persons, firms and corporations, was in excess of the reported aggregate sums by many thousand dollars, which said persons, firms and corporations were entitled to withdraw from said bank.

Whether the overdrafts were understated or not, depends upon the associate question, whether the loans and discounts were overstated. The two aggregate amounts stated in the reports, upon which each of said counts, (4th and 7th), are based, to-wit: The amount of "overdrafts" and the amount of "loans and discounts" just equal the aggregate assets as conceded by the government. The indictment is bottomed upon the idea that the report allotted a portion of the overdrafts, as claimed by the government, to the classification of loans and discounts, and that thereby the amount of overdrafts is reported less than they should have been. If the items which the government claims were improperly classed as "loans and discounts" had been classed as "overdrafts" instead, then the overdrafts would have been increased to just the extent that the loans and discounts were reported in excess of what the government claims they should have been.

The question arising under the two counts (4th and

7th) respecting the understatements of overdrafts, are the exact counterparts of the charges contained in the 9th and 10th counts respecting the overstatement of loans and discounts. The overstatement as to loans and discounts, exactly corresponds, in amount, with the alleged understatement of overdrafts. It is simply, purely and only a question of the classification of assets. The question is thus presented in a double aspect: What are overdrafts? What are loans and discounts? Each question in its correct ultimate determination, involves three distinct facts. *First.* What is the substantive and actual fact, independent of any agreement, purpose and understanding? *Second.* What is the fact, when taken in connection with usage, purpose and understanding? *Third.* What bearing has the usage, purpose and understanding, upon criminal intent?

First. What is the substantive meaning of "overdrafts"? It must be conceded, I submit, that the primary as well as the ordinary and generally well accepted meaning of the word "overdrafts" in connection with banking, is where a customer having a certain sum on deposit, does by his checks upon the bank, which are honored by the bank and paid, draw out more money than he had on deposit with the bank—the excess so drawn is properly styled an overdraft. If, after depositing or having on deposit a certain sum, the customer shall negotiate a bill of exchange, or shall discount the note of his debtor, endorsed by himself, or shall discount his own note, either with or without surety, or shall by his personal verbal promise, supported by a collateral, or otherwise, agree with the bank for a credit to himself of an additional sum without giving his note or memorandum in writing therefor—and when the proceeds of any one, or all of such transactions, shall be placed as a credit, in addition to the sums which he at first had on deposit, shall exceed the amount of his checks, then such customer has not an overdraft. The fact itself, as to whether there was or not an overdraft, would not be effected by the fact, if it were so, that the banker had omitted to credit upon his books the proceeds of either one or all of the transactions just hereinbefore specified. That is, to say, the customer would not in fact have overdrawn his bank account, if the original deposit, taken together with the credit to

which be became entitled, by reason of the negotiation of his bill of exchange, was in excess of the amount of the checks drawn by him. And so of each of the other hypotheses or basis for credit, just above enumerated. In other words, if the customer had actually on deposit, through either of the means specified, an amount in excess of the amounts of his checks, his account would not be overdrawn, although the books of the bank did not show credits to him for the proceeds of either the one or all of such deposits. It would make no difference, in fact, upon the question of overdrafts, whether the bank had properly credited the deposit of the customer or not. If, in point of fact, the bank officers in making a report of the condition of the bank to the Comptroller, should recognize, as a fact, that the additional credit to which the customer became entitled by the discount of his own note with surety or otherwise, had not been credited upon the books of the bank, because of oversight or other reason, such customer's account was reported as a loan and discount, although by the books of the bank it appeared as an overdraft; such report would certainly not be false.

If the customer had left with the bank as collateral security, (to be held a brief, but uncertain time), and such collateral security was a government bond for ten thousand dollars, and in connection therewith it was arranged between the customer and the officer of the bank that the customer might draw checks which should be paid by the bank to the extent of not more than five thousand dollars, and that the checks when paid by the bank should be pinned to the collateral as showing, in part, the transaction, and for this reason, (or for any other), the amount of the agreed verbal loan upon the collateral was not entered as a credit to the customer upon the books of the bank, while the checks were entered to his debit thereon, and thus showing an overdraft; yet if the officers of the bank included such amount in their classification of loans and discounts and not in the classification of overdrafts, surely such report would not be false, in fact nor in any sense a false report. The bank might properly omit to enter upon its books the amount of the loan agreed upon in which the collateral was deposited, because

the customer was unable to determine, even approximately, as to the amount he would be desirous of drawing his checks for.

The question I am here seeking to discuss and present is as to the *fact* of an overdraft. As bearing upon that question, it must be conceded that the books of the bank would be very proper, and, perhaps, competent evidence; but such books are not all the evidence in the case we have specified; nor can such books be the exclusive evidence respecting the true condition of the customers account. If the facts are known to the officers of the bank making the report of the bank to the Comptroller, and such facts so known to the officers of the bank, (though not appearing upon the books of the bank), are taken into consideration by the officers, and the report made in accord with the real facts, such report, though different from the figures upon the books of daily balances, would not be false in fact or false in law.

This cause was tried in the Northern District of Iowa in December 1895. Just twelve years before that, the writer of this argument, as counsel for the defendant, was engaged in the trial of the case of the United States vs. Benjamin F. Allen, President of Cook County National Bank, at Chicago, in the Northern District of Illinois, the Western boundary of which district constitutes the Eastern boundary of the Northern district of Iowa. The questions in the Allen case were not different from the questions in this case. One question in the Allen case was respecting what were "overdrafts," and what were "loans and discounts"—precisely the same questions as in this case and which we are now seeking to discuss. In the Allen case, the owners of an elevator had arranged to ship substantially all the grain in the elevator and to load the same on vessels and cars. They also arranged with the Cook County National Bank to pay their checks each day as they should become indebted to the owners of the grain which was actually shipped during that day, and should give their checks to each grain owner which the Bank would pay, and that after the shipments were completed, which would occupy but a few days, they would present their bills of lading to the bank and draw their bills of exchange annexed thereto and discount them

to the bank, sufficient to pay in full the checks which the bank might pay during the time occupied in shipping. The agreement was executed and during the time of its execution, the Comptroller called for a report of the condition of the bank, and these checks which appeared as "overdrafts" upon the books of the bank were reported as "loans and discounts." The falsity of the report upon that state of evidence was the question before the court and jury. Upon that subject, Judge Blodgett, who tried the Allen case, instructed the jury, among other things as follows: United States vs. Allen, 47th Federal Reporter, Page 698.

"In regard to the first subject of inquiry—were the entries in the reports, or any of them, false? and were they made by defendant? The word "false," as used in this law, means "wilfully and intentionally false." A mistake in the amount of an item, growing out of accounts in bookkeeping, would not make a man guilty under the law. The law intends to punish an intentional mistatement in regard to the affairs of the bank. These reports must show the condition of the bank truthfully. The reports need not agree with the books, either in the statement of assets or the names by which they are called. They may, for instance, call overdrafts "loans," if they are in fact loans, arranged for and understood as such. What I mean is that differences between aggregate items in the report and the books may be explained, for you all understand that a bank could hardly be managed successfully unless its books in some form contained a full history of its business transactions. The comptroller of the currency prescribes the form of the report, and the kind of information it must contain; and, if the books are not so kept as to show these items, in this form, then the statement or report must conform to the truth of the affairs as they actually exist, giving the items of information, called for by the comptroller, truthfully. The law and the form of report prescribed, recognize that in these banks there will be quite an amount which may be carried as cash, and known as "cash items," which will not be in fact cash. In some banks, as appears from the proof, "called loans" are carried as cash. The checks or memoranda evidencing such transactions are counted as cash, merely because they represent cash, and are only intended to serve a temporary purpose. And so a bank officer, in making his report to the comptroller, may distribute his overdraft account, and put such as actually represent loans to the class of loans and discounts."

The defendant was acquitted by the jury, and no ap-

peal was ever taken by the government from the law as laid down by Judge Blodgett, nor were any adverse criticisms thereof ever made by the Comptroller of the Currency or by any court, from the day of the trial of the "Allen case" down to the trial of the Graves case. The defendant in this case had, therefore, a right to suppose that the law as laid down by Judge Blodgett in the Allen case, was the law of the land, and that he, surely, could safely make his reports upon the basis of the law as laid down by Judge Blodgett in the Allen case. He did strictly conform thereto, and he now finds that the law is expounded differently by Judge Woolson, who came upon the Bench from the Bar, more than eleven years after the trial of the Allen case, and during all that time this defendant was making his reports in accordance with the law of that case.

The court will note that in this case the evidence tends to show, and as counsel for the defense claims, does conclusively show, that the items omitted from "overdrafts" and included in "loans and discounts" in the reports involved in the 4th and 7th counts and 9th and 10th counts, were items where the persons overdrawing their accounts, as they appeared upon the books, had, before so overdrawing their accounts, made arrangements with the bank officers, whereby they were to have the right, as upon a loan, to draw the amount, not in excess of the amounts arranged for, either by collateral or satisfactory personal responsibility. The four counts named and especially the two (4th and 7th) which we are now discussing, are bottomed solely upon the fact that these overdrafts, arranged for, were classed by the defendant in the report as loans and discounts and not as overdrafts. In other words the defendant as "a bank officer, in making his report to the Comptroller, did [may] distribute his overdraft account, and put such as actually represent[ed] loans to the class of loans and discounts," and for this he has been indicted and convicted, although his offense is in following the language quoted from Judge Blodgett's opinion in the Allen case.

Among other instructions asked by the defendant, were the following, each of which was refused by the court, and such refusal was duly excepted to, by the defendant. (Rec.

20). "The word "false" as used in the law with reference to entries in the reports in question, means willfully and intentionally false. A mere mistake in the amount or classification of an item growing out of accounts in book-keeping would not make a man guilty under the law. Also,

"What the law intends to punish is an intentional misstatement in the report in regard to the affairs of the bank. These reports must show the condition of the bank truthfully, but they need not agree with the books of the bank, either in the statement of the assets or the names by which they are called. Also,

"What are carried on the books of the bank as "overdrafts" may be properly classified in the reports to the Comptroller as "loans" if they are in fact loans, arranged for and understood as such—that is to say, in making such reports to the Comptroller, the officer making same may distribute his overdraft account and put such as actually represent loans to the class of loans and discounts. Also,

"If you find that defendant erroneously entered overdrafts in the class of loans and discounts, or erroneously made any of the other alleged false entries, such entries would not constitute criminal acts, unless you are satisfied beyond a reasonable doubt that they were made with intent to deceive or defraud; a mere mistake in that respect is not a crime, and if you have a reasonable doubt as to whether such alleged false entries were made intentionally wrong or by mistake, you should give the defendant the benefit of such doubt and find it was a mistake,"

The first three of the above instructions were taken from the instructions given to the jury by Judge Blodgett in the Allen case. The first two, in the very words of Judge Blodgett's instruction, and the last, embodying the substance of that instruction. These instructions were each refused and no part of the charge embodies the principle of either of the instructions asked; but on the contrary the charge by the court to the jury in this case was directly contrary to the charge by Judge Blodgett in the Allen case, as will be seen from the following quotation from the charge. The charge of the court is too long to copy in this argument. It covers thirty-seven pages of the record, while the charge of Judge Blodgett, in the Allen case, covers less

than six. If there is no error in its extended verbiage, nor in its inconsistencies and bewildering prolix statements, its author may well lay claim to inspiration far above and beyond that possessed by the average administrator of the law.

The court charged the jury (Rec. 95,) Par. 22. "The defendant has testified before you with relation to the entries in said reports.

The books of the bank relating to the subject of loans and discounts are in evidence before you. The defendant has testified as to what the books of the bank showed upon these points, as they were then being kept by the bank, and that he knew at the time he made the entries in the reports what the showing was upon these books, as to both loans and discounts and "overdrafts". He has stated to you the aggregate of "loans and discounts" as shown under such heading on the bank's books, at the close of the day's business to which these reports relate, and has stated that he did not enter into said reports as the aggregate of loans and discounts of the bank on such day said aggregate loans and discounts as then shown on said bank books." * * * "Par. 27. The farther question remains as to this "loans and discounts" entry in the report to the Comptroller, did the defendant make a false entry in such report, when he entered as "loans and discounts" the farther sum of $20,-465, which he has testified before you is composed of part of the overdrafts that day shown by the books of the bank to exist in the accounts of various depositors whose names he has given you? It will be convenient to consider this question in connection with the farther charge in the indictment, with reference to said report of August 1st, 1887, that defendant made a false entry in said report as to overdrafts.

The proof shows that the amount of overdrafts entered in said report was the aggregate of $2,948.38 and defendant has testified before you that the aggregate overdrafts upon that day, as shown by the books of the bank, was the sum of $23,413.38. So that the books of the bank at the close of business on August 1st, 1887, show an aggregate of overdrafts in excess of that entered in said report of $20,463. In other words, while the books of the bank, in the progress of their regular keeping from day to day showed the accounts

of its depositors to be then overdrawn in the aggregate of $23,413.38, the entry in the report to the Comptroller as to the condition of overdrafts that day was $20,465 less than shown by the books and the entry in such report was the sum of $2,948.38.

You will have noticed that this difference ($20,465) is the exact amount which defendant testifies he entered from or took from the overdraft account of the books of the bank and put into the entry in the report as to "loans and discounts". And the matter may thus be stated. If defendant rightly did this, that is if in so doing he made a report to the Comptroller of the true condition of the bank, he did not then make a false entry in these particulars. But if the entry in reporting the overdraft that day as $2,948.38 instead of $23,413.38 was not a truthful entry then it would naturally follow that the entry in the "loans and discounts" of said $20,465 of overdrafts was also not a truthful entry. For this sum of $20,465 of overdrafts could not have been truthfully entered in both overdrafts and loans and discounts. In which did a truthful entry of the condition of the bank require it to be entered?

Now there is no difficulty in understanding what an overdraft is. There is no conflict in the testimony on this point. The books of the bank as testified to by defendant and by all the witnesses, and as themselves in evidence before you, show that an overdraft occurs whenever a depositor overdraws the amount of his deposit. I deposit in a bank a thousand dollars subject to be checked out. I commence to check it out. And whenever the amounts of my checks paid by the bank exceed the amount of the funds I have deposited, an overdraft occurs in my account, and such overdraft is the amount the bank has thus paid, over and above the amount I have deposited.

Where then in the report to the comptroller should these overdrafts appear? You will find upon looking at the report made to the comptroller that it contains a heading called "Overdrafts." This heading is "Overdrafts," plainly and simply, and without more "overdrafts". This is the form the comptroller has prescribed and which it was the duty of the defendant to follow and to enter correctly and truthfully whenever he made an entry

in said report with regard to the condition of the bank as to overdrafts.

Counsel for defendant have argued to you that an overdraft is in fact a loan and that therefore the defendant was justified in including "overdrafts" in "loans and discounts". But the comptroller demanded that the bank should report "overdrafts" in one place in the report, as well as "loans" in another place. Defendant assumed to report "overdrafts". Did he make a true entry thereof? No explanation on the report advises the comptroller that the entry as to "overdrafts" is an impartial or incomplete entry, as to "overdrafts" actually existing at the time the report assumed to give them."

Each of these instructions are directly contrary to the law in such cases as laid down by Judge Blodgett and under which law and the accepted interpretation thereof by the Comptroller of the Currency, by bank examiners and by bank officers, the defendant made the reports in question. We were not permitted to show these facts by Bank officers and examiners, respecting which we shall submit reflections further on in this argument. At the time the last instruction above quoted was given, the counsel for the defendant duly objected and excepted.

The exceptions and objections by counsel were stated to the court in the following language, (Rec. 117) "Par. 98. To paragraph 27 and to each and every sentence thereof defendant excepts, because said paragraph is an argument against the defendant and in no sense a statement of facts which the testimony tended to establish. It is not even a fair argument, for that it does not state the facts which were proved in the case. The defendant himself testified that he had been engaged in banking in Dubuque as an officer of national banks for a period of more than twenty years; that it had been the uniform practice of these banks to regard overdrafts which were arranged for in advance, as loans, and he had knowledge that they were so regarded and treated and reported by the First National Bank of Dubuque, by the Commercial National Bank of Dubuque, by the First National Bank of Chicago, by the Union National Bank of Chicago, and by the Third National Bank of Chicago, and that the classification of such overdrafts arranged for, whether secured by collateral or otherwise, were properly recognized, treated, and classed as loans

and discounts; that it appears from this record that the defendant offered to show by the officers of the First National Bank of Dubuque, the First National Bank of Chicago, The Union National Bank of Chicago, and the Chicago National Bank, and by bank examiners in Chicago that the uniform practice of all national banks was to treat, regard, and report overdrafts arranged for as loans; that in fact they were loans."

Instead of following the law as laid down by Judge Blodgett, and as embodied in the instructions asked by the defendant's counsel, the court, in effect, said to the jury, that "overdrafts" as shown by the books of the bank cannot be "loans," nor anything else but "overdrafts," regardless of the proof in the case as to the agreement, understanding and arrangement of the parties. In effect, that "overdrafts" as shown by the books, cannot be shown to be "loans" *in fact*. That is to say, if a customer of the bank shall go to its officers, and shall deposit with them a government bond for $10,000.00 as collateral, and make an arrangement whereby if in his absence he shall consummate a contemplated purpose of buying stock to an amount not to exceed $5,000.00, that the bank will loan him that amount upon his collateral and will pay it upon his checks, and he does actually make such purchases and draws checks to different persons, aggregating less than the amount agreed upon, which checks are paid by the bank when presented, that such a transaction is an "overdraft" and not a "loan"; and that if the bank officers during the pendency of the transaction shall make a report to the Comptroller of the Currency of the condition of the bank, and shall report the amount so drawn and paid on the checks of the customer having deposited the collateral, as a loan or discount, that such report is necessarily and essentially false, for that it was an overdraft and not a loan. We submitt to the court that snch a transaction is a loan and nothing else, and is in no just sense an overdraft. Because the loan was made by oral agreement and no entry made upon the books of the bank, that fact does not change it from a loan, to an overdraft. By the books of the bank it *may appear* to be an overdraft, but in point *of fact* the transaction was a loan and the checks were rightfully drawn and paid, because of the loan.

In the case at bar, the defendant in his testimony given at the same time and as part of the testimony referred to by the court in its charge, (see Rec. 36 and 37), distinctly specified each item constituting the $20,465, of alleged "overdrafts" and stated with respect to them the specific arrangements made by deposit of collaterals and otherwise, constituting the same "loans," as between the customers and the bank. Whether the arrangements as testified to by the defendant and others, constituting the transactions, in fact loans, were wise arrangements and sagacious banking, we do not stop to discuss; because the single question is, whether, in fact, such arrangements were made as did constitute the transactions, in fact loans, and authorized the classification of them with loans and discounts instead of overdrafts.

The court in its charge as above set out (and in its entirety), simply makes an argument as an advocate for the government; and I submit the argument itself is not only unjust but it is essentially unfair, in that it wholly omits to notice the testimony of the defendant made in connection with that which is referred to in the charge, tending to show that the transactions were loans, and leaves the jury to infer, as they manifestly did, that such testimony had nothing to do with the question, and was not entitled to consideration by them, because they were, in law, "overdrafts" regardless of evidence. The entire charge of the court, when taken as a whole, as well as the portions we have hereinbefore just set out, it seems to me, comes within the condemnation, fully and completely, expressed by this court respecting the charge of the trial judge in the case of Allison v. United States, decided December 16th, 1895, and published in 16th Supreme Court Reporter, 258, which language is as follows: "Where the charge of the trial judge takes the form of animated argument, the liability is great that the propositions of law may become interupted by digression, and so intermingled with inferences springing from forensic ardor that the jury are left without proper instructions, their appropriate province of dealing with the facts invaded, and errors intervene which the pursuit of a different course would have avoided."

We submit that there was error alike in refusing each of the instructions upon the subject of overdrafts, as asked

by the counsel for the defendant, and in giving the charge which the court did give as hereinbefore quoted.

For this error the defendant is entitled to have the judgment and sentence rendered by the court herein, reversed and set aside, upon the ground that the overdrafts were in fact correctly stated.

Second. Our second proposition is, "What is the fact when taken in connection with usage, purpose and understanding?" We have under the first heading as to what is the substantive and actual fact respecting overdraft, more or less discussed that proposition; for that in showing what was the actual fact, it was necessary to state the fact discussed with the surroundings of its existence. In other words, an overdraft made without an arrangement with the bank therefor, and in the current course of drawing checks whereby an amount greater than that on deposit is checked out, we show an overdraft proper, as we understand it; but in order to show that fact in its full force it became necessary to set forth the real facts surrounding the agreement between the bank and its customers, and to show that the real fact was different when the checks were made pursuant to an agreement, fromwhat they were when made without an agreement. Certain it is, that a contract with a bank or natural person for a loan of money, constitutes a contract for a loan, whether the agreement to repay is in the form of a promissory note or bill of exchange or a verbal promise. When the loan is made upon verbal agreement and without execution of any paper in connection with it, it is no less a loan because of that fact. If one person meets another on the street, or enters the business house of another, and says to such other person, loan me a hundred dollors for three days, and the request is complied with, it is just as much a loan, as if the party had gone with his note for the one hundred dollars payable to himself or bearer, and upon receiving the hundred dollars had given the note as security or evidence for the loan. The precise point we seek here to make is, that a contract for a loan is completed when the minds of the two persons agree to the same thing. The loan is then complete. If the person borrowing does not execute any written evidence in connection with it, that fact does not change the transaction from a loan. Nor does the exe-

cution of a note, after the contract is made for the loan, add to the original transaction any force; such execution of the note is but an evidence of the transaction. Therefore, when the loan was made by the bank to the customer, with the agreement, purpose and understanding that it was a loan, the transaction was completed so far as the fact was concerned, and the evidence of the transaction is just as confirmatory of the fact of a loan, when it rests in the recollection and testimony of parties, as when it is evidenced by a written contract. Taken in connection with the usage, purpose and understanding of the parties, the loans made by the agreements for permission to draw checks were just as conclusive and complete as the loan would have been if a note had been executed in each individual case. Such loans could only be *properly* reported as "loans and discounts."

Third. What bearing has the usage, purpose and understanding, upon criminal intent? If we shall be found to be in error respecting the substantive fact of a loan; or that such transaction when taken in connection with the usage, purpose and understanding does not amount to a loan; even then, we may safely contend, as we submit, that such usage, purpose and understanding are fairly to be taken into consideration in determining the intent with which the alleged false entry in the report was made. It is not enough to constitute the crime charged in the indictment, that the entry was false and known to be false by the defendant who made it; but the proof must go further, to meet the statute and language of the indictment, and must show that such entry was made "with the intent then and there willfully, wrongfully and unlawfully to deceive" the various persons named. Upon the question of intent to deceive, numerous interogations were put to the defendant and the depositions and testimony of different witnesses were offered and were rejected by the court, and such rulings were duly excepted to by the defendant's counsel at the time.

The defendant called as a witness (Rec. 17,18) C. H. Eighmey, president of the First National Bank of Dubuque, and who was formerly a director thereof, having had twenty one years connection with the bank, and this question was put to him, "I will ask this witness to state what was the uniform practice of that bank in making its report to the

Comptroller as to classifying the overdrafts into loans and discounts so far as respects the overdrafts which were arranged for, in the class of loans and discounts." This question was objected to by the Government as immaterial, (Rec. 46), which objection was sustained by the court, and the ruling was duly excepted to by defendant's counsel and is assigned as error here.

"Counsel for defence stated that they expect to prove by this witness in answer to this question, that it was the uniform practice of the First National Bank of Dubuque, Iowa, in making its reports to the Comptroller of the condition of the bank, to classify its overdrafts in such report, by placing those overdrafts which had been arranged for, as loans and discounts, and only those not arranged for as overdrafts." The counsel for the defense, also in the same connection and as bearing upon the question of intent, offered in evidence (Rec. 47) the deposition of Lyman J. Gage, President of First National Bank of Chicago; also the deposition of John J. P. O'Dell President of the Union National Bank, Chicago; also deposition of Charles A. Folson, accountant of Chicago, Ill., and bank examiner for ten years; also deposition of John R. Walsh, President of Chicago National Bank; to which depositions and to each of them the counsel for the Government objected as incompetent and immaterial, and expressly stated that no objection was interposed to the form of the depositions, but only to the testimony (Rec. 47). The court sustained each of said objections and excluded the testimony of each of the said witnesses, to which rulings the defendant duly excepted. The depositions are found on Record 76-86; and each of the witnesses testifies in his deposition, in substance to their official position in connection with National banks for many years, and that by the uniform custom, usage and practice of the bank, "overdrafts" which were arranged for in advance, were classified as "loans and discounts" in making the reports to the Comptroller.

This evidence has distinct, positive and original force, upon the question of the intent of the defendant in this particular case. Since, if it be true, that the leading national banks, and indeed every national bank, pursued the uniform custom and usage of classifying overdrafts arranged

for in advance by a satisfactory collateral or otherwise, as loans and discounts, and that such practice had been continued for many years and was known to the bank examiners as being the practice of all the banks which they examined—this universal usage and practice becomes independant substantive proof, negativing any willful or criminal intent on the part of defendant in doing the act. The testimony in the despositions of the witnesses offered being by the most eminent national bank officers in the west and of a bank examiner of sixteen years experience, tends to show that the Comptroller of the currency must have had knowledge of that custom and practice; and this testimony, together with the presumption of knowledge on the part of the Comptroller and the express statement of the law by Judge Blodgett in the case of the United States v. Benjamin F. Allen, supra, most conclusively show the absence of any willfulness or criminal intent. That this evidence should have been admitted and that the court also erred in the instructions as above set out, is clearly decided in the case of Potter v. United States in Vol. 15 Supreme Court Reporter, 177—S. C. U. S. Rep.

In that case the plaintiff in error was indicted for certifying checks of a customer when there was not on deposit by the customer an amount of money equal to the amount specified in the checks certified. The books of the bank showed that the customer's account was overdrawn between one and two hundred thousand dollars at the time the several checks were certified. It was claimed by the defendant and he offered to prove by oral testimony, that there was an agreement between the customer and the bank that the customer might have a loan by overdraft not to exceed two hundred thousand dollars, upon which interest was to be daily charged at six per cent, and to secure same by collateral, which was in fact done. The offer to prove this fact, was made in connection with the evidence in relation to the books of the bank. The offer was made as material matter of substantive defense, as a part of the res gestae of the transaction and as having a special bearing on the question of criminal intent upon the part of the defendant. This offer was excluded by the court and duly excepted to by the defendant and was one of the errors assigned in the Supreme

Court.

This court, after showing that the essence of the offence consisted in the criminal intent and quoting the language of the court in Evans vs. U. S. 153 U. S. Rep. 548-594, 14 Sup. Ct. 934, used the language, including the quotation, as follows: "'In fact, the gravamen of the offence consists in the evil design with which the misapplication is made, and a count which should omit the words 'wilfully,' etc., and 'with intent to defraud' would be clearly bad."

Now, it is not disputed that if the overdraft had in form been canceled on the books of the bank and a note taken for the amount thereof, so that the obligation of Evans & Co. was evidenced only by a note, and not left as an open account, this particular section of the law would not be applicable, and any wrong done by the defendant in making or continuing such a loan would have to be punished by proceedings under some other section. If at the opening of the account a note of $200,000 had been discounted and the amount entered to the credit of Evans & Co., the certifications complained of would not have been in violation of this section, because the credit side of the account would always have been in excess of the certifications; or if, at the close of each day's business, a note had been taken for the balance due the bank and the open account canceled, the same result would follow, because each morning before any certification an amount in money was deposited larger than the total certifications of the day. The testimony offered tended to show an agreement on the part of the officers of the bank to treat this overdraft as a loan, drawing interest and secured by collateral, and that such an agreement was carried into effect by the deposit of the collateral and the casting up of interest. If the defendant in good faith supposed that this arrangement was the equivalent of a loan by note, and that the indebtness of Evans & Co. was fully secured by collateral, it seems to us that the jury would have a right to be informed of the fact as bearing upon the question whether he had "wilfully" violated the statute. It cannot be that the guilt or innocence of the defendant under this indictment turns upon the mere matter of bookkeeping." * * "As 'wilful' wrong is of the essence of the accusation, testimony bearing directly on the question of wilfulness is of vital impartance, and error in rejecting it

cannot be regarded otherwise than as material and manifestly prejudicial."

It seems to us that the decision by this court in the Potter case is necessarily and absolutely conclusive upon the case at bar, and shows the error of the court below, beyond all peradventure. For this error the judgment and sentence of the court below, we submit, must be reversed and wholly set aside.

See also authorities quoted and cited under Par. II.

IV.

The court erred in admitting in evidence to the jury a report of the condition of the Commercial National Bank of Dubuque made by the defendant on the 24th day of April, 1884, and in admitting evidence of individual balance book for that day, and in its charge to the jury upon that report and other matters in connection with it.

It will be seen by reference to Record, page 45, that the counsel for the government were permitted to recall R. E. Graves, the defendant, for further (claimed) cross-examination. Thereupon counsel for the government presented to the defendant, the witness, a report of the condition of the bank made by him on the 24th day of April, 1884, and asked him to state the amount of overdrafts as contained in that report. Ans. $5104.69. Counsel for defendant then exibited to the witness the individual balance book of the bank for the day and asked him to state the amount of the overdrafts as shown by such balance book. "Ans. That is correct. $149,724.05." Thereupon, witness was asked by the counsel for defence, and answered as follows: "Q. I will ask you if the overdrafts in excess of the amount stated in the report, if you are able to go over the list, if they were arranged for, and if so, whether they are classed as book loans?" "Ans. They were." This testimony was objected to by the counsel for the defendant at the time as not proper cross-examination, and as incompetent, irrelevant and immaterial. The court overruled the objection, and the defendants counsel duly excepted thereto. (Rec. 45). Such ruling is assigned as error 56 in this court (Rec. 17). Before discussing the testimony, I wish to call the attention of this court to the charge of the court upon the general ques-

tion of overdrafts, and the special use made of this incompetent evidence, as we claim. I only regret that I cannot copy and portray to this court, and present in all its fierceness and vehemence, the manner and tone of the court in charging the jury upon this incompetent evidence. I may, however, call the attention of the court to the closing paragraph, in respect of the argument of the counsel for the defendant, which the court proceeds to answer without stating the argument as it was made either in its grounds or fullness. I take the liberty of doing this in this connection with special reference to the criticism of this court as to such methods of charging the jury set forth hereinbefore, and found in Allison vs. U. S. 16th Supreme Court Reporter 252. The charge is as follows:

"Let us for a moment recur to a point I have heretofore discussed. What is the object of these reports to the comptroller? Unquestionably to advise him as to the condition and method of management of the bank. Why are these reports required to be published in the public prints in the community where the bank does business? Without doubt to afford information to the depositors, other banks, and public generally of the condition of the bank and the methods pursued in its management. Hence, the purpose and manifest wisdom of Congress in requiring a true report of the condition of the bank. Else a bank tottering on the edge of insolvency or already insolvent and actually in a wrecked condition, and unreliable and unsafe in its method of management; would by a law which had in view the safety of the community—be by that law afforded most ready means of deceiving the community, whose suspicions, if aroused, would by these false reports be lulled into repose, and the bank thereby enabled the more completely to pursue any scheme of bank wrecking or robbing upon which it had entered.

Now what would be the difference, or would there be any, in the Comptroller's office as between a slight aggregate of overdrafts, say $2,948, in a report received, and one showing eight times as large (say $23,413.38) in his opinion of the soundness of the bank and its management? Or take an illustration from the evidence before you involving the same principle, but which, because of the large disparity be-

tween report and bank records in this respect, may present more clearly the point under consideration.

Par. 28. The testimony given by defendant shows that on April 24th, 1884, he reported to the comptroller the aggregate overdrafts, as being $5,189.69, while the defendant states the overdrafts on that day as shown by the records of the bank aggregated $149,724.05. Making a difference between the overdrafts as reported to the comptroller and as shown on the books of the bank of $144,619.36.

In other words on that day this bank with a capital of $100,000 had overdrafts it was carrying for its depositors of well nigh fifty per cent in excess of its capital.

Can you doubt, gentlemen, that the judgment of the comptroller would have been different as to this bank's condition and as to its management, had he found the sworn report from this bank showing within a few dollars of $150,090 overdrafts, from what it was when he found overdrafts reported as a trifle over $5,000? Had this immense aggregate of overdrafts been made known to the comptroller how long think you he would have permitted this bank to have continued business?

In this community where these reports were published, have you any doubt, gentlemen, as to whether those dealings with this bank, entrusting their funds to its keeping and management, would have felt differently had they known that instead of the $5,000 published in its report the books of the bank actually contained overdrafts of about $150,000, or nearly thirty times greater than the amount published as true, and exceeding its capital stock by $50,000? How long do you think the country banks having deposits in this bank would have permitted these deposits to remain had they known its overdrafts aggregated $150,090? Was the entry of $5,000 overdraft instead of $150,000 calculated to deceive?

But as bearing on this matter consider the further statement of the defendant that this $144,000—(carried on its books, but not reported as overdrafts) was in the report forwarded to the comptroller and published in the papers of this city, was carried into and reported as a part of its loans and discounts thus swelling the aggregate of loans and discounts over $144,000.

And now put these two matters together. If the community had known that the loans and discount statement as published included and was swelled by an addition thereto of $145,000 of overdrafts, and that the overdraft account as published was $145,000 less than the overdraft as shown by and actually being carried on the books of the bank, have you any doubt that the depositors and public generally would have viewed the bank, believed its condition, and regarded its management in a very different light from the opinions on this point held and experienced when they read the report as actually made ?

This illustration, apparently an extreme one, but one proved without contradition by the testimony of the defendant to have actually occurred, and one which but for this testimony of defendant I would not have dared to imagine had ever existed, this illustration enforces the wisdom of the requirement of Congress that the entries in these reports must be truthful and correct entries.

Par. 29. Counsel for defendant have argued before you that it makes no difference if overdrafts are entered in loans and discounts for they are on the same side of the report and are resources. But the very object of the comptroller in dividing up the resources is that he may thereby gain a knowledge as to what sort of resources the bank has. And to put overdrafts as loans and discounts or as cash because loans and discounts and cash are on the same side, to wit are resources, is to report to the comptroller a state or condition of the bank not justified by this reason according to the books of the bank."

It seems to the writer of this argument that nothing can be more manifest and undisputable, in the law of evidence, than that this report of the condition of the Commercial National Bank of Dubuque, made eight years before the trial, six years before the finding of the indictment and between three and four years before the report upon which the indictment was based, was not competent evidence in the case. It did not tend to verify or illustrate any fact in issue in the case. It was so remote in point of time as to make it irrelevant. It was at its very best only collateral and clearly inadmissible. The error in its admission as well as the manifest purpose of its admission is well set

forth in the most standard work on evidence known to the common law. Mr. Greenleaf in his 1st volume on Evidence, uses this language: "Sec. 52. Collateral facts inadmissible. This rule excludes all evidence of collateral facts, or those which are incapable of affording any reasonable presumption or inference as to the principal fact or matter in dispute; and the reason is, that such evidence tends to draw away the minds of the jurors from the point in issue, and to excite prejudice and mislead them; and moreover the adverse party having had no notice of such a course of evidence, is not prepared to rebut it."

This authority is most completely decisive of the question, and shows the error in its admission; and it also verifies that authority in showing, through the charge of the court "that such evidence tends to draw the minds of the jurors away from the point in issue, and to excite prejudice and mislead them." The appeals to the jury contained in the charge were well calculated to further draw away the minds of the jury from the point in issue and to excite their prejudice. The objection to the introduction of the report and the book of individual balances, that the same was not proper cross-examination, was interposed. This objection was, beyond all peradventure, well taken. There is no claim that the report of April 24th, 1884 had been offered in evidence before, or that it had been mentioned or referred to in any way so as to lay a foundation for cross-examination. It is not possible to conceive that the witness was called in good faith for further cross-examination, in view of the questions asked, and the use made of the evidence in the charge of the court. It was not in any sense proper cross-examination, and for this reason should have been excluded.

(V.)

The court erred in excluding testimony and despositions of bank officers and bank examiners as to the usage of national banks with respect to classifying, in their reports to the comptroller, "overdrafts" arranged for, as "loans and discounts."

The defendant offered in evidence the depositions of Lyman J. Gage, President of First National Bank of Chicago, J. J. P. O'Dell, President of the Union National Bank of Chicago, John R. Walsh, President of Chicago National

Bank of Chicago, and of Charles A. Folsom of Chicago, bank examiner, and also the testimony of C. H. Eighmey, President First National Bank of Dubuque, (Rec. 47, 46 also 18) for the purpose of proving, as the depositions and offer will show, that it was the uniform usage of national banks to report overdrafts arranged for by collaterals or otherwise, as loans and discounts, and not as overdrafts. The deposition of Mr. Folsom, the bank examiner, among other things states as follows ; in answer to cross-interrogatory : 2. " My experience as an examiner of national banks has been that overdrafts arranged for are always included in the item of loans and discounts." The testimony of the others is equally strong.

The counsel for the plaintiff in error contends most confidently that this testimony, which can be seen in full, as far as the depositions are concerned, in the record 76 to 86, was competent and properly admissible for each of three purposes, to-wit : First, To prove that the items embraced in overdrafts, which were classed as loans and discounts, were in fact loans. Second, That in view of the arrangement made by the bank with its customers and taken in connection therewith, the payments of the checks were not overdrafts, but were loans. Third, That however the fact may be as to the two foregoing propositions, yet certainly such testimony was competent to show the absence of any criminal intent and bore directly upon the question of intent, and therefore the court erred in excluding the same from the jury.

1. Upon the question of a fact, whether such advances upon checks, pursuant to an agreement therefor, was a loan or not the offered testimony tended to show that the national banks regard such transactions as loans. That is to say, if one single arrangement of that kind should be made with a bank, and the question arose as to the nature of such transaction, the language and conduct of the parties at the time of the making of the arrangement would have to be heard and considered and the interpretation put upon it which its language would bear ; and as to such single transaction its nature would be determined by the language used by the respective parties and their conduct in connection therewith, and such language would

therefore have to be shown in order to enable a court or jury to determine definitely what the transaction was. But where such transactions have been had by numerous banks for a long and continued period of time, they come to have a character and interpretation as a class, in and of themselves. Such character and interpretation being an established fact, it was proper to prove it by the concurrent testimony of numeerous bankers. All that is necessary to be done to prove the transaction and its nature and character, is to show that the particular transaction was of the same kind as this class which has its recognized interpretation in the business of banking. Now these depositions show that such a transaction between the bank and its customer, to-wit: the arrangement by the customer with the bank for the cashing of his checks as they shall be presented, whether the bank is secured by commercial or property collaterals, or by personal security, whichever way the arrangement is made, it is universally recognized and understood by both parties, (the bank and the customer) that it is a loan of an indefinite or limited sum to an amount not exceeding the amount arranged for.

This testimony, in the depositions by these bankers and the bank examiner, says, beyond controversy, that such an arrangement or transaction had the character and name of loan and not of overdraft; and this, regardless of the fact that the bank may, upon its books, have annexed to such loans the same red ink designation which is used by the bank to indicate an overdraft. The books of the banks do not show that they were overdrafts. The only basis for assuming that they are overdrafts, is that they have the same designation or red mark or entry in red ink upon the books of the bank, as have the overdrafts. No witness testifies that they were in fact overdrafts and the only knowledge the court below had, that these items which were in the reports classed as loans and discounts, were overdrafts upon the books, was just simply the color of the ink in which such items were made upon the books of the bank. The court claimed to know, without testimony, that the entries upon the books of the bank in respect of these items being in red ink that they were necessarily and conclusively "overdrafts" and not "loans" or discounts. I am

aware that courts do take judicial knowledge of some things; but I never before was advised that the practice of banks was one of the matters within the judicial knowledge of the court, without proof. I, therefore, submit that this testimony embraced in the depositions, was competent testimony, because it tends to show the real and true nature of the transaction and tends to throw light upon the entries found in the books of the bank.

2. The single question of fact to be determined in respect of this matter was, whether the classification of particular advances to customers as loans and discounts, was a true classification. Or, in other words, whether those items were, in fact, loans. The court below by its rulings in excluding this testimony, practically said to counsel, I have seen the books and I take judicial knowledge that from the nature of the entries in the books, they being in red ink, these items which defendant has classed as loans and discounts are not loans and discounts in fact, but they are overdrafts, and the entry in the report by the defendant is therefore false. I replied to the court in substance, if we stop with looking only at the books and assume as the court does, that the court has judicial knowledge that such entries make the transaction overdrafts, I, perhaps cannot dispute the conclusion to which the court has arrived. But I want to show to the court what the real transaction was; and although it may appear to be an overdraft, I want to show to the court that by reason of an express agreement between the bank officer and the customer, that although, by the books, the entry appears to be an overdraft, that yet in point of fact when taken in connection with the agreement I propose to show, it is but a loan and was properly classed among loans and discounts. The court replies in effect and practically by its ruling; this court will not hear such testimony, because the books are conclusive testimony as to what the transaction was, and I will hear no proof to contradict those books. I reply to the court, that this defendant is charged with making a false report and I want to show that the facts are in accord with the report and not in accord with the books. I have a right to rely upon the presumption of innocence which the law has already introduced in this case, and we have two written entries here,

the one in the books, and the other in the report, and since by the presumption in which the court indulges there is a conflict, I want to show what the real fact is. Besides this, Judge Blodgett told me twelve years ago, when trying a similar case against B. F. Allen, and indeed he told the jury that, "The reports need not agree with the books either in the statement of assets or the names by which they are called. They may, for instance, call overdrafts "loans," if they are in fact loans, arranged for and understood as such. What I mean is that differences between aggregate items in the report and the books may be explained, and, if the books are not so kept as to show these items, in this form, then the statement or report must conform to the truth of the affairs as they actually exist, give the items of information called for by the comptroller truthfully." *U. S. vs. Allen*, 47 N. W. Rep., 698."

Relying upon the law as thus expressed by Judge Blodgett, I ask the court for leave to show the real fact as it existed, when there is taken into consideration both the books and the arrangement made by the customer with the bank. The court below answered this argument by denying the right to introduce the testimony which would show the real fact of the transaction. I submit this was error.

3. But, in this case, the government must show not only that the report was false, in that it classified overdrafts as loans, but it must show that such classification was done willfully with intent to injure or defraud the association or other person. The government claiming, at this juncture, that having shown the wrong classification of overdrafts as loans and discounts "then in the absence of contravening proof, you (the jury) are authorized and justified to find that defendant made such false entry with intent to deceive or to defraud within the meaning of the statute" (see instruction, par. 46, Pg. 110). Now in view of this claim of the government, we sought to introduce this testimony, embodied in the depositions, which, I contend, shows abundantly that the uniform practice of the national banks in making their reports to the comptroller was to classify the overdrafts arranged for, as loans and discounts and from such uniform practice of the national banks the comptroller must have known, and will be presumed to have known, that such classification was made. That such uniform practice of national banks, within the

knowledge of the comptroller, and without dissent or complaint from him, was a sufficient authorization to national bank officers, to make reports in accord with such uniform practice and custom ; and that the making of such reports in accord with such custom was a negation of an intent to deceive or to defraud. That such practice and such interpretation by bank officers and by the comptroller of the currency, absolutely negatived any intent to deceive. But it is only necessary for us to show that this testimony would tend to negative such intent in order to show the error of the court in excluding it.

We confidently submit, therefore, to this court that the court below erred in excluding the offered testimony and that its error is manifest under either one of the three views we have just hereinbefore discussed. For this error we submit the judgment must be reversed.

VI.

The court erred in its instructions respecting intent.

It does not seem practical, with full fairness to the court below, to abbreviate the instruction upon the question of intent, although it seems almost unfair to this court to set them out again herein in full ; and yet in order to present the question, exactly as it is, to this court, I deem it necessary to set out the following found in Record, page 108, 109 and 110.

"But if you should find, within the instructions above given you, that defendant did make any such false entry as to the particulars above stated, and within the meaning of the term as I have defined it to you, then you will proceed to consider the second and remaining point, which the government must prove to entitle it to a verdict of guilty, viz :

Did defendant make such false entry or entries, or any of them, with intent to deceive any agent appointed to examine the bank's condition, or to deceive some one or more officers of said bank or to defraud said bank or any other corporation or firm or person ?

And if the jury find such intent, in any manner as charged, is proven against defendant, this finding, in connection with finding defendant made the false entry as above defined, will authorize a verdict of guilty against

defendant. But if the jury do not find proven against defendant any such intent, the defendant must be acquitted.

Par. 43. It is a sound and wise principle of law, that a man shall be held to intend the legitimate consequeuces of his acts—that is, that he intended that which is the natural and necessary result of his act, freely and knowingly done. If a man, knowing a coin is counterfeit, passes that coin upon another as genuine, he will not be allowed to say that he passed it with innocent intent. From his act of intentionally passing the coin as genuine, when he knows it to be counterfeit, the law presumes and holds him to the presumption that he passed it with guilty intent.

If a man brings to me a horse and proposes to sell it to me, and affirms to me that he owns the horse, and that his ownership is full and complete, when in fact he knows the horse belongs to another and that he has not the least right or interest as owner in said horse, and I, relying on his statement, purchase the horse of him, he will not be heard to claim that he sold the horse to me with innocent intent, but the law stamps his act as done with guilty intent, as done with an intent to deceive me, and with fraudulent and false pretences. In other words, wrongful acts knowingly and intentionally committed can neither be justified nor excused on the ground of innocent intent. The color of the act determines the complexion of the intent.

Par. 44. If a director of a national bank, in a report to the comptroller of the condition of his bank, makes an entry which is false, which does not contain or state the truth with regard to the condition of the bank upon the date named in this report, and such entry relates to a material matter, and such director at the time he made such false entry knew it was false and calculated to deceive, and that it did not give a true and correct statement of said bank's condition at the time with respect to such entry, in such case the law will not permit him to say that he made such false entry with innocent intent, and not expecting to deceive anyone thereby. If such a director wilfully puts up a report designed to allay any suspicion then existing; designed to induce faith and trust in his institution, and it is proven that the entries in that report are false in fact, and at the time he made them

he knew them to be false, it would be a mockery upon justice to allow him to say that he made those entries with innocent intent. In such a case, gentlemen, the act done is in law stamped with guilty intent on the part of the person doing it.

Par. 45. Notice, gentlemen, that in all the instances I have named, I have given prominence to the fact of knowledge in the person doing the act. I do not mean that a man can be convicted of the crime charged in this indictment for merely negligent, careless action. Speaking generally I may say, that if the director making the false entry was in fact ignorant of the condition of the bank, and did not know its resources and liabilities, however recreant he might be to the position he held and the duties devolving upon him, and whatever other liabilities, civil or criminal, he might thereby be subject to, he could not be convicted under the section on which this indictment is based. And yet I ought to add that this does not in anywise, justify or authorize a director to purposely, wilfully and knowingly close his eyes and his ears to the facts around him, or which lie directly in his path, for the purpose of making it easier to those engaged in plundering or wrecking a bank. Let me illustrate my meaning. If a director of a national bank, knowing that those in charge of or actively managing the bank, are despoiling it, robbing its treasury, knowing that the funds of the bank are being dissipated improperly, withdrawn from the bank and worthless paper, (miscalled "securities,") is being substituted instead thereof,—if thus knowing, such director refuses to accept the information lying directly across his path and purposely keeps himself in ignorance or refrains from taking active part in the bank's management, that he may thereby permit such transactions to go undisturbed or undetected, and he then lends the credit of his name, puts his signiture to untrue and false reports connected with the condition of the bank for the purpose of enabling such a fraud to go undetected,—in such a case it will be no shield to him to show that he had no knowledge of the truth or falsity of the report he has signed. To hold otherwise would be to make the law go hand in hand with rankest injustice, to legalize robbery, to make our temples of justice modern cities of refuge, and

our courts encouragers of what plain people properly call crime.

Par. 46. Therefore, I have to say to you, gentlemen, as the law of the case upon this point, that if the defendant, at the date named in the reports to the comptroller named in the indictment, as submitted to you, knowingly inserted in a report of the resources and liabilities of his bank a false entry as heretofore defined to you and as charged in the indictment submitted to you, of such a nature that the ordinary, natural and legitimate result thereof would be to deceive the other officers of the bank, or any one of them, or any agent then or thereafter appointed to examine affairs of said bank, or to defraud the bank or any other company, body politic or corporation, or any individual person whatever, then, in the absence of contravening proof, you are authorized and justified to find that defendant made such false entry with the intent to deceive or to defraud within the meaning of the statute and to find against the defendant as to the second and remaining point above stated."

The syllabus of all these instructions is, that if the report was false and the party making it knew it to be false, that these two facts establish a guilty intent. In other words the instructions convert the statute from an offense committed with a specific intent, to the simple facts constituting no offense. That is to say, if the indictment charged the defendant with making a false report of the condition of the bank, it would require just the same proof to establish his guilt as is required where the intent to defraud is charged. Or, in other words, the defense defined in the statute is no other or different from a statute which omitted any language with respect to the intent with which the act was done. Whereas, the statute, since it prescribes the making of a false entry with intent to injure or defraud, requires three facts to establish the guilt of the party charged. One, the making of the false entry, the other having knowledge of its falsity and the third having the intent to injure and defraud. Three distinct substantive facts are required by the statute. The instruction of the court limits the acts requisite to find the defendant guilty, to two of three facts prescribed by the statute, to-wit: the

false entry and secondly the knowledge of its falsity. This is utterly at variance with all the law respecting crimes with a specific intent.

As I understand the rule in such cases, it may be comprehensively stated as follows, to:wit : when by the common law or by the provision of a statute a particular intent is essential to an offense, it is necessary to allege the intent with distinctness and precision, and to support the allegations with proof. And on the other hand if the offense consists in doing an unlawful or criminal act, the evil intention will be presumed, and need not be alleged or proved. See

1 Bouv. Law Dict. " Intention."

1 Bishop's New Criminal Law Sec. 735, also, 733, 734, 729 Par. 4.

1 Archbold's Crim. Pr. & Pl. 364-5.

1 Wharton's Crim. Law 940 a.

And as a general rule, in all cases of assault with intent, the intent forming the gist of the offense, must be specifically averred and specifically proved. See,

1 Whart. Crim. Law 648, also,

State v. Clark 80th Iowa 716.

State v. Harrison 82 Iowa 716.

U. S. Tharp 5 Cranch C. C. 390.

In the case of Commonwealth v. Hersey 2 Allen (Mass.) 183, Bigelow, Chief Justice, in delivering the opinion of the court, uses this language (179-80). "So in an indictment for murder by blows or stabs with a deadly weapon, it is never necessary to allege that they were inflicted with an intent to kill or murder. The law infers the intent from proof that the acts were committed, and that death ensued. The averment, therefore, of the criminal act comprehends the evil or wicked intention with which it was committed. The true distinction seems to be this: when by the common law or by the provision of the statute a particular intention is essential to an offense, or a criminal act is attempted but not accomplished, and the evil intent only can be punished, it is necessary to allege the intent with distinctness and percision, and to support the allegation by proof. On the other hand, if the offence does not rest merely in tendency, or in an attempt to do a certain act with a wicked purpose, but consists in doing an unlawful or crimi-

nal act, the evil intention will be presumed and need not be alleged, or, if alleged, it is a mere formal averment, which need not be proved. In such case, the intent is nothing more than the result which the law draws from the act, and requires no proof beyond that which the act itself supplies. 1 Stark. Crim. Pl. 165. 1 Chit. Crim. Law, 233. The King v. Philipps, 6 East, 474. 1 Hale P. C., 255. Commonwealth v. Merrill, 14 Gray, 415. To illustrate the application of the rule, take the case of an indictment for an assault with an intent to commit a rape. The act not being consummated, the gist of the offense consists in the intent with which the assault was committed. It must therefore be distinctly alleged and proved. But in an indictment for the crime of rape, no such averment is necessary."

I submit that these authorities recognize and establish a doctrine wholly at variance with the doctrine of the instructions quoted under this subdivision of our argument. The instructions were therefore erroneous.

In connection with this subject, and while the court has before it the charge of the court upon the question of intent, I desire to call the courts attention to the further fact and objection, that the entire of paragraph 45 above quoted is irrelevant and not pertinent to the case and is entirely outside of any of the charges contained in the indictment or any suggestions arising from the proof and indeed beyond even the wantonness which counsel sometimes manifest in such cases. There was no evidence tending to show any wrong on the part of the defendant or any director of the bank in the line of robbing the bank, despoiling it, or defrauding it. Such paragraph was therefore wholly misleading, immaterial, irrelevant, and certainly prejudicial to the defendant.

One additional suggestion which ought to have been earlier made under this subdivision is, that the statute under which the prosecution is had is not for a general criminal or fraudulent intent; but for doing the act with a specific intent * * * * "to injure or defraud the association or any other company, body politic or corporation, * * *" The allegation is of an intent to defraud particular persons or corporations and not generally to defraud. This creates a very marked difference between this case and the cases re-

ferred to by the court in his charge, wherein an intent will be presumed. Here a specific intent is charged in the indictment and there must be proof introduced in the case to sustain the charge that the defendant entertained such specific intent. In this view as well as in the other views we have hereinbefore presented, the court most manifestly erred in the instructions given upon the subject of intent. For the error in the instructions specified under this subdivision, it is respectfully submitted, the judgment must be reversed.

VII.

The court erred in refusing to give instruction No. 8 asked by the defendant.

As connected intimately with the point discussed upon the question of intent, in our last subdivision, we present the instruction asked by defendant upon the question of intent specifically, as a means of further enforcing upon the attention of the court the point or proposition of law discussed in our last subdivision. That instruction as asked by the defendant was as follows, to-wit: (Rec. 21).

"The offense in this case, as defined by the statute, is a making a false entry in a report to the comptroller with the intent to deceive, to injure, to defraud the bank examiner, the officers of the bank, or persons, firms, or corporations dealing with the bank. The offense is not completed by showing a making of a false entry, but in addition to the falsity of the entry, it is incumbent upon the government to prove that the defendant acted with the intention as specified in the indictment, to-wit, to deceive the bank examiner, officers of the bank, or its patrons. In the case of an offense consisting of the doing of a criminal act, such as larceny or robbery or murder, the proof of the fact of the larceny or the robbery or the killing with a deadly weapon, sufficiently establishes the unlawful intent required by the law; for that, in such cases the accused is conclusively presumed to intend the natural and necessary consequences of his act; but in an offense like that with which the defendant here is charged, which is made up of both the act, which is not criminal, and the intent, it is necessary for the Government to make proof of the specific intent charged in the indictment, and without such proof of intent you cannot find

the defendant guilty—that is to say, the Government must prove not only the false entry, but since that act is not a crime, no presumption of intent arises from the doing of it, but, the intent must be established as being entertained by the defendant in connection with the making of the false entry, and without such proof, in addition to the false entry, it is your duty to acquit the defendant."

It is not my purpose to further discuss that question under this subdivision. I wish, however, to call the attention of the court to the further authorities upon the question as follows :

2 Whart. Crim. Law Sec. 1279.

3 Greenleaf on Evidence, Sec. 13.

U. S. v. Allen 47, Federal Rep. 701.

VIII.

The court erred in excluding the evidence of R. E. Graves; the evidence of C. H. Harris and the copy of notice published in the Dubuque Herald of the dissolution of L. D. Randall & Co. and the formation of the corporation of L. D. Randall & Co. Co.; and also in refusing instruction No. 9 asked by defendant.

Upon the subject of the liabilities of directors, of whom L. D. Randall was one, the attorney for defendant put to R. E. Graves, when a witness for himself on the stand, this question, (Rec. 16, error 45) " State whether or not the bank accepted the corporation (the L. D. Randall & Co. Co.,) as a prior debtor on the indebtedness, and so advised both the company and the corporation." Also (Rec. 17, error 52). In sustaning objections to a like question put to wittness, C. H. Harris, whether he saw published in the Dubuque Herald notice of the dissolution of the firm of L. D. Randall & Co., the formation of the corporation of L. D. Randall & Co. Co., and the assumption of the firms liabilities by the corporation. Also in excluding the notice thereof as published in the Dubuque Herald (error 53).

The facts developed by the testimony bearing upon these questions and this alleged error, as shown by the testitimony in the cause, were that L. D. Randall was a director of the Commercial National Bank of Dubuque; that said L. D. Randall was upon a certain time a member of a firm of merchants doing business in Dubuque under the name of

L. D. Randall & Co; that prior to the making of the report of the condition of the bank on August 5th and October 5th, 1887, the firm of L. D. Randall & Co., sold its business to a corporation styled L. D. Randall & Co. Co., and that as a part of the purchase price the corporation assumed the liabilities of the firm, including the liability of L. D. Randall & Co., to the Commercial National Bank of Dubuque. The three questions upon which these errors consolidated, are assigned, relate to establishing the fact that L. D. Randall & Co., advised the bank of such sale of its business to the corporation and that the corporation advised the bank that the corporation itself had assumed to the bank, which assumption was accepted, the payment of the debt of the firm. These facts would have been developed by R. E. Graves' answer and by the published notice of dissolution and assumption of the firm's debts by the corporation shown by said notice.

Mr. Graves testified that the liability of the corporation resulting from the assumption by it of the debt of the firm of L. D. Randall & Co., to the bank, was not included in the statement of the liabilities of directors in either of said reports. He testified that he did not include such indebtedness in the liabilities of directors because he regarded the corporation as the principal debtor both as between the bank and the corporation, and the corporation and the firm of L. D. Randall & Co. The rejected evidence, as I submit, would have shown that the relation of the corporation and the firm to that debt and to the bank were in substance as recognized and believed by Mr. Graves. And further that the testimony sought to be elicited by the questions would at least have a bearing upon the intent of Mr. Graves in making the report and that the evidence should have been received as thus bearing upon the question of criminal intent. It was with this view that the defendant's counsel asked the court below to give instruction No. 9 (Rec. 21-22 error 131) to the jury. That instruction was as follows :

"In this case the Government offered testimony tending to show that in connection with the reports made of the condition of the bank August 1st and October 5th, that there were four certain notes then held by the bank made

by L. D. Randall & Co., of which firm L. D. Randall was a director of the Commercial National Bank of Dubuque, that such notes should have been included in the lists or amount of liabilities of directors; but on this subject the defendant had introduced testimony tending to show that before the making of either of said reports of August 1st and October 5th the firm of L. D. Randall & Co. had sold its property to the corporation known as L. D. Randall & Co. Co., and that such corporation as a part consideration for the property acquired from L. D. Randall & Co., assumed to pay all the debts of L. D. Randall & Co., including the notes and overdrafts due to the Commercial National Bank of Dubuque, and that said corporation did expressly in words assume to the bank officers the payment of said notes and overdraft. Now, if you shall believe from the evidence that L. D. Randall & Co., did sell its property to the corporation of L. D. Randall & Co. Co., and that said corporation did assume to the officers of the bank the payment of the notes held by the bank, together with the overdraft, then by such assumption the corporation of L. D. Randall & Co. Co. became, as between it and the L. D. Randall & Co., the principal debtor to the bank, and L. D. Randall & Co. were sureties or guarantors to the bank for the payment of said notes and overdraft if the said corporation failed to pay; and if you shall believe from the evidence that the defendant at the time honestly believed from the fact that the obligation did become thereby the obligation of the corporation and the relation of the L. D. Randall & Co. thereto was that of an endorser or guarantor, and so believing, omitted to include said notes and overdraft in the liabilities of directors in the report of August 1st and October 5th, then you should find the defendant not guilty upon that item in each of these reports."

It cannot be necessary to cite authorities to this court to the proposition of law whereon this claim is founded, and which I submit as being the law beyond question, to-wit: That where one person being a debtor to another, sells to a third person property and such third person agrees, as part payment for said property, to pay the debt thus owing by the vendor to such other person, and the pur-

chaser notifies the creditor that he has bought the property and has assumed the payment of the debt of the vendor due to the creditor and thereon promises to pay such debt, which promise is accepted by the creditor; that in such case the purchaser of the property, having assumed the debt of the creditor, becomes the primary debtor to the creditor as between himself and his vendor, and also as between himself and the vendor's creditor.

The proposition of law I regard as too well settled and too universally recognized to require or even justify citation of authorities to support it.

If the proposition of law is correct, then, since the liabilities of directors which were to be included in the report to the comptroller of the liabilities of directors, was simply their primary and personal liabilities, then the omission of Mr. Graves of the debt against L. D. Randall & Co., which had been assumed by the corporation, from the liabilities of directors, was correct and the report in that regard was not false. But, in any event, the fact of the assumption by the corporation of the debt of the firm, L. D. Randall & Co. and the view which Mr. Graves took of it, was proper and competent evidence to give to the jury for the purpose of showing the absence of criminal intent. It was also error to refuse the instruction.

IX.

The charge of the court in each and every paragraph thereof was erroneous, unduly prolix and misleading.

The objections to each paragraph of the charge were made impromptu and when counsel was very familiar with and full of every proposition both of law and fact involved in the case. Those objections and exceptions are contained in the record from 113 to 123. The attention of the court is asked to each of those objections and to the paragraph, of the charge to which they refer. The objections as made in the record, we submit as our argument thereon with reference to each paragraph and upon each of which error has been assigned. I submit those objections, as being my argument here repeated, upon the errors assigned.

The writer of this argument has known personally and well, the learned judge who delivered the charge in this

case and likewise knew his father for many years before his death and other members of the family, and has always entertained and still does a warm and sincere regard and profound respect for both father and son, with whom the writers relations have always been most cordial and pleasant. Any criticism which this argument may contain respecting matters in the progress of the trial or the contents of the charge, are prompted purely by duty to his client and regard for the law as he sees it. I have sometimes thought it my duty to state that this cause was tried during the first year of the service of Judge Woolson upon the bench to which he came from the bar and not through the bench of the state court. A generation ago I went from the bar to the Supreme bench of my state, and I yet have very vivid recollections of the feeling I had, for more than the first year of my service, that when a case was before the court wherein the state was a party, I felt that I was the especial guardian of the rights and peace of the people, to such an extent that I have often felt and expressed the fear, that such feeling gave to me a bias against an accused which may have exibited itself in my opinions in such cases. These reflections frequently came to me during the trial of the case in the District Court and have not infrequently presented themselves during the preparation of this argument. I wish to submit, after this statement, more or less apologetic, some general reflections respecting the charge given by the court to the jury in this case.

It ought not to be objected by counsel, that the judge should magnify his office or compliment the jury; such exordium is perhaps not improper; and yet, at this stage of my experience I could always excuse their omission. It seems to me that the eulogy upon the National Banking law, as well as the history of its origin, was out of place and I think misleading. To eulogize and magnify a law as being superior to other laws, would naturally tend to arouse the bias of jurors against one violating such a benificent statute. The tendency of such eulogy and the phraseology of it, would certainly not help the jury to assume a thoroughly impartial and judicial standpoint for considering the charge against the defendant for viclating such a statute. The further remarks by the court in its charge respecting the manage-

ment of a bank and that if honestly managed they would not fail, and it was only when the law was violated that a bank was brought into insolvency, was prejudicial to defendant. This together with comment upon the provisions of the law for watching the bankers, through the Comptroller of the Currency, together with the known fact that the Commercial National Bank of Dubuque had failed, amounted to a considerable of an accusation that it had failed through the dishonesty of the bank officials or through the dishonesty of some one connected with the bank. The court did not say that the defendant was the man in so many words, but the charge fell but very little short of it.

In paragraph 16 the court tells the jury that the defendant *starts* into the trial with the presumption of innocence in his favor. Now that was true, but it was a half truth which is sometimes said to be, and in this instance probably was, fully equal to a gross error.

For that the defendant did not only start into the trial with the presumption of innocence, but the charity of the law remained with him during the trial and that presumption existed until it was overturned by proof satisfying the jury beyond a reasonable doubt that the presumption was not true. The charge in effect denied to defendant the benefit of this presumption of innocence, except at the beginning, while the law kept that presumption till the end. I do not propose to refer in this general review to those special matters in the charge which have been discussed under the previous subdivision, of this argument.

In paragraph 28, when the court was discussing the magnitude of the discrepancy between the overdrafts as reported on April 24th, 1884, and as shown by the books of the bank, this language is used, which was of course an error, to-wit: "Can you doubt gentlemen, that the judgment of the comptroller would have been different as to this bank's condition and as to its management, had he found the *sworn* report from this bank showing within a few dollars of $150,090, overdrafts, from what it was when he found overdrafts reported as a trifle over $5,000." Here the charge advised the jury that that report of April 24th, 1884, was *sworn* to, and uses other language quite at variance with what the verity seemed to counsel for defend-

ant to be. The charge calls that report and the book of daily balances "This testimony of the defendant." The whole charge, it is submitted, is the most biased argument of which a zealous counsel could be capable. It refers to matters about which there was no testimony such as a "scheme of bank wrecking or robbery upon which it had entered." A letter from the comptroller addressed to the officers of the bank was admitted in evidence when the counsel for defendant thought it wholly immaterial, irrelevant and incompetent. That letter is made the theme of haranguing the jury after the the manner of some lawyers.

If I have said enough, and I think I have, to induce the court to read the entire charge, I have said all which ought to be said, and perhaps more than I should have said. If I have exceeded the bounds of fair criticism or propriety, I trust the peculiar circumstances of the whole case will furnish some paliation, if not an excuse for it.

Respectfully submitted,

C. C. Cole of Des Moines, Iowa,

Of Counsel for Plff. in error.

165-323

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165-323.

In the Supreme Court of the United States.

OCTOBER TERM, 1896.

RUFUS E. GRAVES, PLAINTIFF IN ERROR,
v.
THE UNITED STATES. } No. 31.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

BRIEF FOR DEFENDANT IN ERROR.

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IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

BRIEF FOR DEFENDANT IN ERROR.

Rufus E. Graves, late president of the Commercial National Bank of Dubuque, Iowa, plaintiff in error, was indicted for the crime of making false entries in reports of that bank, which were rendered to the Comptroller of the Currency on May 13, August 5, and October 10, 1887. The counts relating to entries on May 13 were withdrawn (p. 129). Graves was tried December 7–16, 1892, before Judge Woolson and a jury, and was convicted upon six counts. The charge of the learned judge is reported at 53 Fed. Rep., 634.

The relevant portions of § 5209 of the Revised Statutes, upon which Graves was tried, are as follows:

> Every president, director, * * * or agent of any association * * * who makes any false entry in any book, report, or statement of the association, with intent in either case to injure or defraud the association, or any other company, body politic or corporate, or any individual person, or to deceive any officer of the association, or any agent appointed to examine the affairs of any such association, * * * shall be deemed guilty of a misdemeanor, and shall be imprisoned not less than five years nor more than ten.

Each count of the indictment charges that Graves did "knowingly, wrongfully, and willfully make a certain false entry in a certain report of the Commercial National Bank of Dubuque," etc., "of which said association the said Rufus E. Graves was then and there the president and a director," it being a report to the Comptroller of the Currency, as required by the law. After explaining the respective false entries, each count charges that the entry in question was made "with the intent then and there willfully, wrongfully, and unlawfully to deceive any agent then or who might thereafter be appointed, under Title LXII of the Revised Statutes of the United States, to examine the affairs of the Commercial National Bank of Dubuque aforesaid, and with the intent then and there willfully, wrongfully, and unlawfully to deceive certain officers of the Commercial National Bank of Dubuque aforesaid, the names of whom are to the grand jurors unknown, and with the intent then and there willfully,

wrongfully, and unlawfully to deceive and defraud the Commercial National Bank of Dubuque aforesaid and divers other corporations, firms, and persons who were then doing or who might thereafter do business with the Commercial National Bank of Dubuque aforesaid, the names of said corporations, firms, and persons being to the grand jurors unknown."

STATEMENT OF FACTS.

The bill of exceptions contains but a partial statement of the facts proved, which commences with the words (p. 25):

> The following proceedings *among others* were had, and the following *among and with other* testimony given and offered, and objections thereto made [etc.].

At the close of the Government's case as contained in the bill of exceptions is the following note (p. 35):

> The Government also offered *other material evidence not set out herein*, and rested.

Nor is the bill of exceptions printed in full. On account of the poverty of plaintiff in error, counsel have stipulated for very considerable abbreviations in printing the transcript of record (pp. 128–29).

The charge of the learned judge at the trial contains a very full and clear statement of the case.

It is undisputed and, indeed, conceded, that Rufus E. Graves, plaintiff in error, prepared the reports containing the false entries in question (pp. 26, 27, 35). It will be necessary only to consider the three counts therein upon the August report, which report is set out at pp. 52–3,

the schedules thereto annexed being set forth at p. 52. These three counts relate to the following subjects:

I. *Overdrafts.*—The August report (which related to the condition of the bank at the close of business on August 1, 1887) contained the following entry under the head of—

RESOURCES.

2. Overdrafts $2 948.58

The indictment charges that this entry "did in substance and effect declare" that certain persons, who were unknown to the grand jurors, were indebted to the bank in the sum aforesaid for money withdrawn from the bank "in excess of the aggregate sums and amounts" which they "were entitled to withdraw and receive from said bank." It is further averred that the entry was "false in this, to wit, that the aggregate sum and amount withdrawn from" the bank "in excess of the aggregate sums and amounts which" they "were entitled to withdraw and receive from said bank, and which should have been placed in said entry, was much larger than said sum of $2,948.58 by many thousands of dollars, the particular sum and amount thereof being to the said grand jurors unknown" (p. 2).

It was admitted on the trial that overdrafts amounting to over $20,000 were omitted from this entry; but it was claimed that they were contained in the report under the heading of "Loans and discounts," which was customary and proper.

The overdrafts omitted are stated to have been regularly reported to the directors under the name of "book

loans" (pp. 36, 44, 49), although the truth of this testimony was thrown in doubt by a Government witness (p. 50). Mr. Graves's explanation was as follows (pp. 35–6):

> Certain overdrafts were classified and were put in the reports as loans and discounts, because the different persons making such overdrafts *had spoken to the managers of the bank and obtained permission to make the same.* Those overdrafts which have not been arranged for were reported as overdrafts. Those that were included in loans and discounts were accounts that had been arranged for and permission asked to overdraw. In other accounts treated as overdrafts were those where the person drew his check in advance without asking permission, and when this was done it was treated as an overdraft. Where they asked permission to overdraw and such permission was granted it was classified as a loan. * * * The book loans were made to parties who had been to the bank and made arrangements to overdraw. The overdrafts were where checks were presented and paid without any arrangement or authority for the drawers to overdraw their accounts. Where an account had been overdrawn at first without permission and parties thereafter made arrangements for its continuance for a few days, it was classed under the heading book loans.

These "overdrafts classified as book loans" are set forth at page 37. Out of a total of $20,465 it will be perceived that over two-thirds are charged to President Graves and his brother, J. K. Graves, who was also a director; and that all but $1,375.42 of the balance seems to be for the benefit of the business of Director L. D. Randall.

It will be noticed that no attempt is made to show that the distinction between "book loans" and other overdrafts was based on the existence of adequate, or any, security. The test was simply whether or not permission to overdraw had been asked beforehand. Mr. J. K. Graves, in explaining his own overdraft, says (p. 49):

> I did at each time arrange with John R. Waller for making the overdraft, and it was made upon my telling him what uses I had for the money, and when and the sources from which I expected to meet such overdrafts.

Defendant, Rufus E. Graves, said (pp. 37–39):

> Q. State what was the practice in respect of reporting these book loans to the board of directors.
>
> A. The matter was generally talked of in an informal way, and the talks had with those wishing to so overdraw were given to the board. * * * There never was any formal action taken by the board. They were always reported to them, and generally read off by John R. Waller.

On cross-examination he said (p. 42):

> *The books do not show* the classification of overdrafts. What I stated was that they were laid before the directors.

Defendant was not permitted to show an alleged "general usage and practice of national banks in treating in their reports overdrafts previously arranged for as loans or otherwise" (p. 39). From the excluded testimony of three presidents of Chicago banks on this subject, it is inferable that the distinction there recognized is between secured and unsecured overdrafts (pp. 76, 80, 84). Mr. Graves was, however, allowed to testify as to his own

"knowledge of the practice of other national banks" in this respect. He answered: "I knew it was the custom." Among other instances, he named two of the Chicago banks above mentioned (p. 39). The testimony of their presidents to the contrary being excluded, this point went to the jury in a shape peculiarly favorable to the defendant. The cashier was permitted to testify that he had told Mr. Graves of a similar custom in another national bank.

II. *Directors' liabilities.*—The August report contained the usual schedule classifying the loans and discounts (p. 51). This schedule contained the following entry:

Liabilities of directors (individual and firm) as payers. $69,500.00

The indictment charges this entry to mean that the bank had on hand at the time in question "divers promissory notes and bills of exchange and other obligations or evidences of indebtedness," unpaid and aggregating not over the above sum, "which said notes, bills of exchange, obligations or evidences of indebtedness were either made, drawn, or accepted by persons who were then and there directors of said banking associations [*sic*] or by firms or corporations composed in part of such directors, and which said notes, bills of exchange, obligations, or evidences of indebtedness had been discounted or purchased by the Commercial National Bank of Dubuque aforesaid, and were then and there held and owned by said banking association" (p. 3). The indictment further charged that the entry was false in that the directors' liabilities were "many thousands of dollars in excess of the amount stated in said entry last aforesaid in said

schedule of said report, the particular amount being to the said grand jurors unknown" (p. 4).

It would appear from the charge (pp. 106–8), and from the bill of exceptions, that the omissions in this entry, as proved on the trial, were two in number.

One omission consisted of seven notes drawn by L. D. Randall & Co., of which firm L. D. Randall, one of the directors, was a member. The omission is admitted; but it is attempted to be explained by the fact that payment of the notes had been assumed by a corporation known as "The L. D. Randall & Co. Company." Defendant's testimony is as follows (p. 38):

> They should not have been reported as directors' liabilities, because the L. D. Randall & Co. Company had acquired all the assets of the firm, and the bank had been notified of this and of the assumption of the liabilities of the firm by the corporation, and had accepted that notice. The party primarily liable was L. D. Randall & Co. Company.
>
> Q. What notice had the bank of the transfer of the property of L. D. Randall & Co. to the L. D. Randall & Co. Company?
>
> A. *The cashier and myself had had verbal or written notice from Mr. L. D. Randall;* and our attention had also been called to the articles of incorporation and to the advertised notice of the dissolution of the firm; that it had been succeeded by the corporation, which took all the assets and assumed all the liabilities.
>
> The bank accepted the corporation as its debtor upon that indebtedness, and so advised both the company and the corporation. At the maturity of these notes the corporation did take them up.

Other omissions were those of certain drafts by Director J. K. Graves (p. 38). For some reason only one of these drafts was submitted to the jury (p. 107). This draft was drawn upon the Iowa City Gas Light Co. Defendant says (p. 38):

> I did not put the liability of J. K. Graves as connected with the investment account as a director's liability, because he was not liable as a principal, nor did I report the draft of * * * the Iowa City Gas Light Co., upon which he was drawer, among the liability of the directors, because his liability was not as principal.

III. *Loans and discounts.*—The August report commenced as follows (p. 52):

RESOURCES.

1. Loans and discounts (see schedule)..... $551,048.60

The indictment charges that this entry "did in substance and effect declare" that the bank had on hand at the time mentioned "divers *promissory notes and bills of exchange* made and executed by divers persons, firms, and corporations," which were unpaid and of the above amount, and which "had been duly and regularly discounted or purchased" by the bank, and of which the bank "was then and there the true and lawful owner for value." The indictment further charges that this entry was false, in that the bank "was not then and there the true and lawful owner and holder of unpaid promissory notes and bills of exchange which were then and there a resource of said bank" to the amount above stated.

This fact is admitted by defendant. Apart from the "book loans" aforesaid and of an expense account, as to which he was exonerated by the trial judge (p. 97), defendant admits under oath that the "loans and discounts" as they appeared on the bank books were only $490,133.78, and that the amount appearing on the August report was partly made up of an investment account, $75,449.82 (pp. 37, 96). The investment account is described by him as follows (p. 36):

> That account made on May 13, 1887, was $60,000 of mortgage bonds guaranteed by J. K. Graves, a lot of stocks and bonds taken for $30,098.42, for which we had the guaranty of J. K. Graves. That was less the amounts that had been collected from securities, which, deducted from the total, left the investment account at $75,449.82.
>
> The account originated in this way, to wit: The bank held $60,000 of Iowa Iron Works Co. paper, with J. K. Graves's endorsement, and we took the mortgage bonds in place of that paper, regarding the mortgage as better security.

On cross-examination he said (pp. 42–3):

> There was in the bank $60,000 of the bonds of the Iowa Iron Works Co. owned by the bank and payable by the company. We took the bonds in lieu of the acceptances of the Iowa Iron Works Co., thereby gaining additional security, as we thought.

The contingent fund.—The so-called "contingent fund" was also a subject of discussion upon the trial, although it is not the subject of any of the counts which were submitted to the jury. It arose as follows: The Acting

Comptroller of the Currency, on July 1, 1887, notified the directors of the bank that their capital was impaired to the extent of $45,574.72, and that they must within three months make up the deficiency by an assessment of $45,000 to be levied on the stockholders, the balance to be paid out of the first profits accumulated (pp. 61–2, 64). The items of impairment are set forth by the Comptroller (p. 61), but the bank is allowed to charge part of them off by reason of a surplus fund of $30,000 (p. 62), and a balance of undivided profits, $8,683.40 (p. 62). President Graves and all the directors of the bank on July 11 joined in a letter to the Comptroller stating that his communication had received prompt attention "and $45,000 has already been contributed and paid over to the cashier" (p. 58). This letter was written by defendant (p. 42). The statement clearly imported that the money had been actually paid in currency of some kind; and there could have been no difficulty, in view of the Comptroller's bill of particulars, in immediately straightening out the bank's accounts.

This was not done, however. As a matter of fact, only $15,000 had been actually paid, and the other $30,000 were represented by discounted notes (pp. 40–41). Each of the notes went into the discount account of the bank (p. 41).

The cashier testifies as follows (p. 45):

> The $45,000 called the contingent fund went into the bank about July 11. The notes were entered in the discount register and were charged to loans and discounts; $15,000 of it was in cash.

This $45,000 does not directly appear in the report, but it was deducted from the total in arriving at the amount of loans and discounts—very curious proceedings, even as to the $30,000 which were not paid in cash.

The cashier's explanation is as follows (p. 45):

> $45,000 was deducted from the assets because we considered that we held it subject to the action of the board of directors, who were to designate the objectionable paper that was still listed in the loans and discounts.

Defendant's explanation is the same (p. 38):

> Those who made the contributions by notes to the bank did not draw any money from the bank thereon. The objectionable paper to be retired by these contributions had not been selected, but were included in the general assets, and for that reason the $45,000 was deducted from the aggregate.

Upon cross-examination he said (p. 41):

> That credit was made there subject to the future action of the board. As I said before, they did not properly belong on the books, and we were at a loss how to treat it. It was entered there until the board should take action. * * * It was called the contingent fund, and was subject to the action of the board. $15,000 of it was cash actually in the bank on August 1, 1887.

THE INDICTMENT.

Plaintiff when arrested pleaded not guilty. He afterwards asked leave to withdraw his plea, and filed a motion to quash and a demurrer. The court denied leave, but gave him the right to avail himself "during

the introduction of evidence upon the trial of said cause and upon motion in arrest of judgment" of the points which he wished so to raise (pp. 10–11).

It is respectfully submitted, however, that no merely formal defects were thus reserved. § 1025 of the Revised Statutes provides as follows:

> No indictment * * * shall be deemed insufficient, nor shall the trial, judgment, or other proceedings thereon be affected by reason of any defect or imperfection in matter of form only which shall not tend to the prejudice of the defendant.

This section makes no reservation in behalf of formal defects to which attention is called by demurrer. Of course, the trial judge may in his discretion quash an informal indictment and require a proper one to be drawn; but it is submitted that this section makes all such questions discretionary and unreviewable. In *Connors* v. *United States* (158 U. S., 408, 411), the court say, referring to this section and speaking of an objection to an indictment:

> Nor, if made by demurrer or by motion and overruled, would it avail on error unless it appeared that the substantial rights of the accused were prejudiced by the refusal of the court to require a more restricted or specific statement of the particular mode in which the offense charged was committed.

The objections made to this indictment are in main based upon an alleged lack of particularity. They are disposed of by *Cochran* v. *United States* (157 U. S., 286, 290, and cas. cit.); *Durland* v. *United States* (161 U. S., 306, 314, 315).

The allegations common to all of the counts in the indictment were set forth in the opening of this brief. The allegations peculiar to each pair of counts, and to which objections are pressed, are as follows:

Fourth and seventh counts.—Objection was made because the grand jury alleged that certain persons were to them unknown, whereas this defendant claims that their names were known or could easily have been found out. Such an objection can not be raised by demurrer or motion in arrest, for the error, if any, is not apparent on the face of the indictment. The objection can only be sustained by affirmative proof at the trial. (*Coffin* v. *United States*, 156 U. S., 432, 451.)

Fifth and eighth counts.—There is, perhaps, an incorrect definition in these counts, since they allege that the phrase "liabilities of directors (individual and firm) as payers" includes all paper made, drawn, or accepted by directors "or by firms *or corporations* composed in part of such directors." Assuming this to be a mistake (but compare Rev. St., § 5200), it is not material. The words "or corporations" do not appear when the crime comes to be charged. The grand jury then avers that the entry was "false in this, to wit, that the aggregate liabilities of the directors of the" bank were in excess, etc. If the aggregate liabilities of the directors were in fact over $49,867.40, it is immaterial whether their liabilities as stated in the report (individual and firm), were precisely that amount or something still less; whether or not the entry purported to include any liabilities of corporations. In either case it is a false entry.

Ninth and tenth counts.—These counts are objected to because they charge, as constituting the falsity of the entries in question, simply that the bank was not the owner and holder "of unpaid *promissory notes and bills of exchange*" to the amount specified, whereas the entries referred to do not contain the words "promissory notes and bills of exchange," but instead the words "loans and discounts." The counts do, however, expressly allege that the words "loans and discounts" are here used as equivalent to the words "promissory notes and bills of exchange." Each count, therefore, is entirely consistent with itself.

The definition of "loans and discounts" seems correct. A loan, in the common meaning of the word, can indeed be evidenced by a specialty; or it may be evidenced by no paper at all. The present question relates, however, to the meaning of the phrase "loans and discounts" as used in the draft reports prepared by the Comptroller. It is shown upon examination of the report that loans of the varieties last mentioned are not included under the head of "Loans and discounts," but under the head of "U. S. bonds" or "other * * * bonds" or "overdrafts." Unsealed evidences of debt, taken by banks, are all in substance bills of exchange or promissory notes.

The form of the report is prescribed by the Comptroller of the Currency under § 5211 of the Revised Statutes, which is as follows:

> Every association shall make to the Comptroller of the Currency not less than five reports during each year, *according to the form which may be prescribed by him*, verified by the oath or affirmation of

> the president or cashier of such association, and attested by the signature of at least three of the directors. Each such report shall exhibit in detail and under appropriate heads the resources and liabilities of the association at the close of business on any past day by him specified. * * *

The primary vice of defendant's argument is in the assumption, as matter of law, that the phrase "loans and discounts" can not be so used as to exclude some classes of loans. Having made this assumption, he feels justified in insisting, upon demurrer, that the court must judicially know part of the indictment to be false. Whether or not the term "loans and discounts" ought to be used as equivalent to "bills of exchange and promissory notes," the point is one that can not be taken by a demurrer or motion in arrest of judgment. Entries in such reports are subject to expert explanation. (*United States* v. *Britton*, 107 U. S., 655, 663.) It is hence possible at least that the words used in the report may have been used with the meaning alleged; and the sufficiency of proof can only be questioned by an exception taken on the trial. No sufficient exception was taken on the present trial in regard to this matter; and since it appears that some of the material evidence in the case is omitted, it is presumable that the allegations of the indictment were sufficiently sustained.

QUESTIONS OF EVIDENCE.

There are many assignments of error raising questions of evidence, but some are mere repetitions of objections to the indictment, some are plainly immaterial, and most

of the rest have been abandoned, the matters referred to not appearing in the bill of exceptions.

Two classes of objections remain for consideration.

The overdrafts of 1884.—Defendant Rufus E. Graves had testified on direct examination in defense of his reports that they were made "in the same manner in which I had been accustomed to make like reports at the bank before that time" (p. 45). Being cross-examined, he was forced, against an objection and exception to his answer, to admit that in his report on the condition of the bank on April 24, 1884, he had given only $5,104.69 as the amount of overdrafts, whereas they were in fact $149,724.05 (p. 45); and the fact was brought out that his own overdrafts were $25,733.25 on that day. The bill of exceptions being fragmentary in character, it is impossible to tell how far this line of cross-examination was carried. By pleading his own prior custom, however, as bearing on his innocence of motive, Graves had opened the door to a cross-examination showing the actual facts, and thus bringing out the fact that he had been in the habit of concealing extensive overdrafts, as well as the fact that these extensive overdrafts had been largely for the personal benefit of the directors themselves. It is, therefore, unnecessary to consider whether, had defendant omitted himself to open the door, the testimony would have been admissible as bearing on motive, within the familiar exceptions to the general rule excluding evidence of collateral facts.

Custom as to overdrafts.—The court allowed defendant to testify and produce corroborating evidence to the fact that he knew it to be the practice of other banks to enter overdrafts "which had been arranged for" among the "loans and discounts" instead of among the "overdrafts," where they properly belonged. His testimony was admitted as bearing on the question of intent (pp. 39, 45, 103–4). Beyond this, however, all evidence of the alleged custom was excluded as illegal.

Among the evidence excluded was a series of depositions which are set forth at pp. 76–86. Only one of these depositions tended at all to sustain defendant's contention. This was that of Charles A. Folsom, of Chicago, a professional accountant, who claimed to have been examining the accounts of national banks for 16 years past (p. 81). On cross-examination, however (on written cross-interrogatories), when asked to state the names and location of these banks, etc., he answered: "I could readily do so, but do not consider it would be proper" (p. 83). When asked for a copy of one of the reports in which it is claimed that "overdrafts" had been included among "loans and discounts," he answered: "I could produce copies of such reports, but do not consider myself privileged to do so" (p. 82); and this although the reports are in no way confidential, but, on the other hand, are especially required to be published in the newspapers. (R. S., § 5211.) Under these circumstances the question at once arose whether the witness had sufficiently shown his qualifications as an expert; and his admission in that capacity was a matter resting wholly within the discretion of the trial judge. (*Inland Coasting Co.* v. *Tolson*,

139 U. S., 551, 559, and cas. cit.; *Chateaugay Iron Co.* v. *Blake*, 144 U. S., 476, 484.) The other witnesses fail to support defendant's testimony, but, on the other hand, squarely contradict it, showing that overdrafts which are to be classified among "loans and discounts" must be not only "arranged for," but also "secured by collateral" (pp. 76, 80, 84). Two of these witnesses refused, like Mr. Folsom, to produce copies of their reports. One witness, however, Mr. Lyman J. Gage, President of the First National Bank of Chicago, did so; and the report produced by him was very clearly in accordance with the requirements of the Comptroller. It shows "by *a memorandum written across the blank* under the head of 'Overdrafts' the following: 'Included in bills discounted is the sum of $435,608.60, representing advances made in open accounts on cash collateral'" (p. 78). The exclusion of the testimony of these three gentlemen, and especially that of Mr. Gage, was prejudicial to the Government rather than to the prisoner. The exclusion is amply supported, however, by the fact that each of these witnesses denies any knowledge of a general custom, and each testifies only as to the practice of his own bank.

The question asked of the witness C. H. Harris in this regard was excluded (p. 44), and defendant presses an assignment of error in that regard; but the question was substantially answered in a manner satisfactory to defendant (pp. 44–5). The same remarks apply to defendant's testimony on the same question (p. 39).

It is hardly necessary to refer to the questions asked of C. H. Eighmey, a director in the First National Bank

of Dubuque, as to the manner in which that bank made up its reports. Mr. Eighmey was further asked the question "whether or not he is acquainted with the general practice, usage, or custom of national banks in the State of Iowa and in the neighboring States upon the subject of classifying arranged-for overdrafts in their reports to the Comptroller as a part of the loans and discounts up to 1888" (p. 47). An objection by the Government was sustained, and defendant excepted. It will be remembered that defendant was allowed freely to prove his own knowledge as to the practice of other banks as bearing on his intent. Except to this extent, the alleged custom was evidently bad for two reasons: First, that it was merely local; and second, that it was clearly illegal and a fraud upon the Comptroller, unless the entry of overdrafts were accompanied by a cautionary explanation, as in the example given by Mr. Gage.

REQUESTS TO CHARGE.

So far as correct, these seem all to be covered by the charge. (See particularly paragraphs 24, 32, 39, 42, and 51; and *infra*.)

INSTRUCTIONS TO THE JURY.

The exceptions to the charge of the court are quite voluminous, covering nine pages of the printed record (pp. 113–124), and they assume a division of the charge into 55 paragraphs, to all but eight of which exceptions are taken. The exceptions appear to be very carefully drafted, sometimes being over half a printed page in length.

Are they regular?

It is clearly settled that exceptions, to be regular, must be taken while the jury are still at the bar. (*United States* v. *Carey*, 110 U. S., 51; *Pacific Express Co.* v. *Malin*, 132 U. S., 531, 538.)

The bill of exceptions does indeed state that the instructions were excepted to "when given, as follows" (p. 113). It ends, however, with the following extraordinary statement (pp. 124–5):

> It is certified that in the *assignment of errors and* exceptions to the charge of the court to the jury *in the original bill of exceptions*, as originally prepared by counsel for plaintiff in error and tendered to the court, the charge had been *by said counsel divided up into paragraphs* without consulting the court as to the manner of said divisions; that the exceptions to each paragraph of the charge *followed the paragraph* to which the exceptions related as said paragraphs had been so made by counsel; that the *court refused to accept the paragraphs* as so by counsel made and insisted on the charge, *if paragraphed*, must be divided up so as to leave each completed topic in a paragraph to itself, instead of having the paragraphs divide up topics inharmoniously and in places separate a material part from its context, and the court divided up the charge into topical paragraphs and submitted same to counsel for defendant; that said counsel then proposed to erase from original bill the exceptions from the charge and leave said charge to stand as a whole, with the exceptions to follow at the close of charge, but asked to be permitted, for their own convenience, to have the original paragraphs as made and numbered permitted to stand in said charge, to which the court consented, and that thereupon such exceptions were each and every of them erased, so as

to leave the charge one continuous whole, leaving, however, the paragraph numbers therein as they were *numbered by the counsel* for the plaintiff in error, and the several exceptions to the charge were inserted after the charge in their numerical order, and this certificate is made in order that the same may be shown and made a part of the record in the case.

It will be noticed that the charge was cut up into numbered paragraphs, not by the court, but by the counsel for plaintiff in error; that the exceptions were all prepared after the charge was cut up in this manner; that this first came to the attention of the court when the bill of exceptions was presented for signature; and that this was cotemporary with the preparation of the assignment of errors. As the assignment of errors contains paragraphs relating to the overruling of the motions in arrest of judgment and for a new trial, it is clear that it was prepared long after the verdict.

It is therefore respectfully submitted that these exceptions are irregular and of no avail to plaintiff in error.

Paragraphs 9, 12, 18, 24, 43, 49, 51, and 52 of the charge, as paragraphed by counsel for plaintiff in error, are not excepted to. As throwing light on the exceptions actually taken, paragraphs 24 and 51 should be read.

General remarks as to exceptions.—It would be confusing to undertake a separate analysis of each of these voluminous exceptions. Most of them can be disposed of by a few general remarks.

Some are based on alleged omissions from the charge. Omissions, however, are of no avail to plaintiff in error

when not covered by requests to charge. (*Isaacs* v. *United States*, 159 U. S., 487, 491; *Goldsby* v. *United States*, 160 U. S., 70, 77.)

The crime of inserting false entries in reports to the Comptroller of the Currency being one whose serious nature may not always be apparent to the jury on first sight, the trial court spent much time in explaining the national-banking law and its general objects, and showing the serious character of crimes against the law and in particular against its provisions with regard to accurate reports of the bank's business. These portions of the charge are complained of by plaintiff in error, but were perfectly proper. (See *Reynolds* v. *United States*, 98 U. S., 145, 167–8; *Wiborg* v. *United States*, 163 U. S., 632, 645, 656–7; 2 Thompson on Trials, § 2456.) The jury are entitled to understand the reason of the law as well as the law itself.

The trial judge also charged at length upon the facts of the case, indicating by his line of discussion a pretty clear opinion on his own part of the prisoner's guilt. A similar charge by Sanborn, J., in *United States* v. *Allis*, 73 Fed. Rep., 165, was attacked as "arguing the testimony" and sustained by this court (155 U. S., 117, 123). It seems hardly necessary at this late day to cite authority to the effect that in a Federal court the jury may be charged upon the facts as well as upon the law, and that the judge may state his own opinion of the facts, provided he leaves all the questions finally to the jury for their decision. Since, however, counsel question the right in the present case, we cite two recent and well-known

authorities in criminal law, where the language of the court was much more positive than here.

In *Simmons* v. *United States*, 142 U. S., 148, 151, 155, the court, in denying the request of the jury for their discharge, said:

> Whenever in the opinion of the court the testimony is convincing, it is the duty of the court to hold the jury together. *Therefore* I must decline your request to be discharged.

In *Wiborg* v. *United States*, 163 U. S., 632, 643, 656, the court said:

> That this was a military expedition designed to make war against the Government of Spain would seem to the court to be free from reasonable doubt. The question, however, is one for your determination alone, and I submit it to you as such.

To the same effect are *Starr* v. *United States*, 153 U. S., 614, 624–5, and cas. cit.; *Chicago, &., Ry. Co.* v. *Stahley*, 27 U. S. App., 157, 164, *per* Mr. Justice Brewer; *Hayes* v. *United States*, 32 Fed. Rep., 662.

It is also claimed that the trial judge misstated the facts in instructing the jury. Whether he did so it is impossible to say, since it appears that some material evidence is omitted from the bill of exceptions (pp. 25, 35; see *Stokes* v. *United States*, 157 U. S., 187, 192). Had he done so, however, it would have been a mistake of fact, and not an error of law, and therefore could not be the basis of an exception. (*Coffin* v. *United States*, 162 U. S., 664, 680; *Wiborg* v. *United States*, *supra*, at p. 656.)

Defendant also objects to the use of certain illustrations on various points as tending to mislead the jury. This practice has been sustained in *Pointer* v. *United States*, 151 U. S., 396, 416.

In connection with the exceptions to paragraphs 4–8 and 21–23, see paragraph 24. In connection with the exceptions to paragraphs 16 and 17 see paragraph 51. The alleged defects in illustration in paragraph 20 are supplied elsewhere; as in paragraphs 24, 26, 32, and 39. The remarks concerning bank wrecking in paragraph 36 are merely in explanation of the requirement that the liabilities of directors should be set forth in the reports to the Comptroller of the Currency. Defendant's exception to paragraph 50, like that to paragraph 16, is based, not upon an inclusion, but upon an omission from the charge, and therefore should have been made the basis of a request to charge. Defendant's point is that the court should specifically charge that the presumption of innocence accompanies the prisoner throughout the trial until the evidence shall satisfy the jury beyond a reasonable doubt of his guilt. There is such a thing as over minute mental analysis (*Allen* v. *United States*, 150 U. S., 551, 561); and it is submitted that the charge as to the presumption of innocence at the commencement of the trial, accompanied with a clear exposition of the doctrine of reasonable doubt, gives all the protection that justice and common sense require. Paragraph 53, relating to the credibility of defendant's testimony, is amply justified by recent decisions of this court. (*Reagan* v. *United States*, 157 U. S., 301; *Johnson, alias Overton*, v. *United*

States, 157 U. S., 320, 326; *Wiborg* v. *United States*, 163 U. S., 632, 656.)

Investment account (paragraphs 25, 26).—Defendant reported as among "loans and discounts" $60,000 bonds of the Iowa Iron Works Co., of Dubuque, secured by a mortgage. Defendant in his explanation (p. 117) insists that the classification "could not be intended to deceive, because coupon bonds secured by mortgage are regarded as preferable to the average loan and discount." This is exactly contrary to the fact, when applied to banking operations. It is vital that the assets of the bank should be not only tolerably safe, but "quick." The fallacy of the old "land banks," which sought safety of investment at the sacrifice of quickness in collections, was exploded so long ago as the time of Alexander Hamilton. A bank holding a large proportion of bonds, as distinguished from notes and bills, is in danger of suspending payment in case of a panic. Consequently it is important that the Comptroller of the Currency should be informed upon this point. The Comptroller has made this perfectly clear in the blank form prepared by him for the periodical reports of the banks, separating the "U. S. bonds on hand (par value)" and the "other stocks, bonds, and mortgages (market value; see schedule)" from the "loans and discounts" (p. 52). This was clearly understood by defendant, who inserted a schedule of "other stocks, bonds, and mortgages" (p. 51), but deliberately omitted the $60,000 aforesaid. His explanation is trivial (p. 43): "We did not expect to keep these bonds permanently; they were put in there as a temporary matter; it was simply loans

and discounts in another form." It is much more likely that he concealed this item because of the identification of the company with J. K. Graves, one of the directors of the bank (see pp. 29, 36). This connection has already been noticed by the Comptroller (pp. 62–3), who had said: "The relations between your bank and the Iowa Iron Works and the other Graves enterprises appear to be such as should not exist. * * * The directors of a bank have no right to use its capital and deposits for carrying on a manufacturing business." It was a dangerous matter to let him know the extent to which the bank was involved in this particular manufacturing enterprise. It was therefore very proper for the court to give instructions which were in effect "an argument against defendant."

Overdrafts (paragraphs 27–32).—Defendant in his explanations misstates the facts bearing upon the false entry as to overdrafts; citing the First National Bank of Chicago as an authority for an alleged "uniform practice of all national bands * * * to treat, regard, and report overdrafts *arranged for* as loans." As above shown, that bank treated them as loans only when they were secured by collateral; and in its reports to the Comptroller of the Currency stated specifically the amount of these overdrafts, so that the Comptroller had that full information the withholding of which by this defendant is one of the grounds for his conviction. It is not claimed that there is any ambiguity in the word "overdrafts." There is not the slightest basis for any distinction between overdrafts made by permission of the teller by cashing the

checks when presented and overdrafts made by the previous verbal permission of an officer of the bank; yet this is the only distinction given by defendant in his testimony, except that these verbal permissions were afterwards reported to the directors of the bank. As to the overdrafts, defendant stood convicted upon his own testimony, provided fraudulent intent were shown; and the question of intent was fully and clearly left to the jury by the court. Substantially the same charge was given by Sanborn, J., in *United States* v. *Allis, supra,* at p. 178.

The overdrafts of three years previous, and the practice of other banks, have been discussed by us already in connection with the rulings upon questions of evidence.

The learned counsel for defendant makes all through the erroneous assumption that the overdrafts here in question were secured.

Contingent fund (paragraphs 33–5).—In proving the exact amount of the loans and discounts, the facts relating to the so-called "contingent fund" necessarily came to light (see p. 96). By certain items elsewhere discussed, the defendant had added over $100,000 to the proper amount of loans and discounts; but, on the other hand, he had unduly deducted $45,000 from the fund, which $45,000 constituted the fund now under consideration.

The origin of this fund has been already described. The Comptroller had required the immediate payment of $45,000 to make up for impairment of capital stock. Three months' time was given for this operation (p. 64),

but defendant and the other directors had already informed the Comptroller that the amount had "been contributed and paid over to the cashier" (p. 58). If this statement had been true, $45,000 should have appeared upon the August report as cash, or among the reported investments. It was not true, however; only $15,000 had been paid in cash; for the balance, notes had been discounted; and the notes were being held in bank.

It is clear that this $15,000 cash and these $30,000 discounts should have appeared upon the August report, and that, because the latter did not appear, the total of the "loans and discounts" item was illegally affected.

Defendant's only explanation for the omission was that the $45,000 was intended to take the place of certain commercial paper appearing among the "loans and discounts;" that the paper to be charged off to profit and loss in this way had not yet been selected by the board of directors; and that thus, to balance the account properly, it was necessary to reserve the $45,000. No proper excuse is given for delay in carrying out in detail the very clear and specific directions of the Comptroller as to charging off (pp. 61–2). Defendant, however, would have been exonerated from this particular charge if he had made any entry on the account explaining his treatment of the $45,000. He made no such entry; and the whole evidence as to this so-called fund tends to confirm the suspicion that the officers of the bank, in making the report, were endeavoring to conceal the real condition of the accounts from the Comptroller of the Currency. This suspicion is confirmed by comparing the account itself with the previous correspondence.

The remarks of the learned trial judge are therefore founded upon the facts in the case. The evidence has a very material value upon the issue of intent to deceive or defraud.

The learned judge (p. 106, top) left to the jury, as a question for their determination, the following:

> Did defendant, in what he did with reference to the deducting of this $45,000 from loans and discounts, and entering in the report to the Comptroller as correct and true the amount of loans and discounts as thus obtained—did defendant make a false entry within the meaning of this term as I have defined it?

This sentence might be criticised as tending to lead the jury to believe that there was a count in the indictment relating to the $45,000 item, and that one of the issues raised by the plea of "not guilty" was thus before them. No separate exception was taken to this sentence and the language of the exception taken to the whole paragraph of which it was a part was not such as to make this point clear to the trial judge. Such a point, therefore, would be untenable. (*Allis* v. *United States*, 155 U. S., 117, 122.)

Assuming, however, that the sentence had been properly excepted to, it contained no error, and the jury can not have been misled or the defendant prejudiced. In arriving at the exact amount of loans and discounts it was necessary for the jury fully to investigate and understand this item. Even if they had been led to suppose that they had this question before them as one of the ultimate questions for decision, defendant could not be

prejudiced, because, in the absence of any count in the indictment raising such question, the decision of the jury upon it forms no element of the verdict.

It was, however, as we have said, a proper question for the jury to consider and decide, because it was raised by relevant and competent evidence, was necessary to an understanding of the case, and had a very strong bearing upon the question of intent to deceive and defraud in making the various false entries which were the subject of the indictment.

Liabilities of directors (paragraphs 36–40).—Some paper drawn by L. D. Randall and Co. (L. D. Randall being a director), and a large draft accepted by J. K. Graves, a director, were omitted from the report. Defendant attempts to justify the omission upon the ground that the directors were only liable secondarily, and that certain corporations were liable primarily upon the paper. Evidence was introduced, for instance, upon the question whether or not the paper accepted by J. K. Graves was accommodation paper.

All this is clearly immaterial, since liabilities of directors are to be reported, whether the liabilities are primary or secondary, absolute or contingent. Upon commercial paper the nature of the liability as between the parties liable is matter of parol evidence. There can be no intention in demanding a report of directors' liabilities to allow any to be withheld from the eye of the Comptroller, nor is there any indication from which such intent could be inferred. Such withholding could be made the cover of wide frauds.

This question was fully discussed and decided in *Cochran* v. *United States* (157 U. S., 286, 295–6), where an indictment for failing to report a contingent liability of the bank among its "liabilities" was sustained.

Intent to deceive or defraud (paragraphs 42–9).—In charging as to the intent to deceive or defraud, the court instructs the jury "that a man shall be held to intend the legitimate consequences of his acts" (see *Clarion Bank* v. *Jones*, 21 Wall., 337); that "wrongful acts knowingly and intentionally committed can neither be justified nor excused on the ground of innocent intent. The color of the act determines the complexion of the intent." He charges that if a bank director make a false entry with relation to a material matter, and "at the time he made such false entry knew it was false and calculated to deceive," etc., "in such case the law will not permit him to say that he made such false entry with innocent intent and not expecting to deceive anyone thereby." If he makes false entries "designed to allay any suspicion then existing—designed to induce faith and trust in his institution"—then "it would be a mockery upon justice to allow him to say that he made those entries with innocent intent. In such a case, gentlemen, the act done is in law stamped with guilty intent on the part of the person doing it." This does not apply, as the learned judge charged, to "merely negligent, careless action," but the director must not "purposely, willfully, and knowingly close his eyes and his ears to the facts around him, or which lie directly in his path, for the purpose of making it easier to those engaged in plundering

or wrecking a bank." (Compare *Cochran* v. *United States*, 157 U. S., 286–294.) The learned judge then applies the law to the present case as follows (paragraph 46):

> Therefore I have to say to you, gentlemen, as the law of the case upon this point, that if the defendant, at the date named in the reports to the Comptroller named in the indictment, as submitted to you, *knowingly* inserted in a report of the resources and liabilities of his bank a false entry as heretofore defined to you, and as charged in the indictment submitted to you, *of such a nature that the ordinary, natural, and legitimate result thereof would be to deceive* the other officers of the bank, or any one of them, or any agent then or thereafter appointed to examine affairs of said bank, or to defraud the bank or any other company, body politic, or corporation, or any individual person whatever, then *in the absence of contravening proof you are authorized and justified to find that defendant made such false entry with the intent to deceive* or to defraud within the meaning of the statute, and to find against the defendant as to the second and remaining point above stated.

The learned judge then calls attention to the fact "that the statute does not require that any person should have been in fact defrauded or actually deceived by the false entry in order to make the crime complete." Although, as he remarked, the attempt might have been so bungling that the false character of the entry could easily be discovered by an expert (compare *United States* v. *Britton*, 107 U. S., 655, 664); "yet if there was any attempt to deceive, if the false entry was *knowingly* entered, and was

a false entry which was *naturally and necessarily calculated to mislead*, this would be sufficient in the absence of contravening proof to authorize the finding that the person making it made such false entry with intent to deceive." In other words, "The bank official at his peril must make it truthful according to his knowledge when he signs his name to the report as being correct. And if he *intentionally* made it otherwise, he must answer to the law in any attempted or intended deceit he has practiced."

Part of these instructions are excepted to; part are not. Defendant insists that fraudulent intent can not be inferred from the making of a false entry, but that there "must be proof of the specific intent charged."

It is respectfully submitted that this view is altogether erroneous and overlooks the well-known fact that criminal intent is always a matter of circumstantial evidence—evidence usually found only in the fact that the apparently wrongful act is not fully and satisfactorily explained.

The learned counsel overlooks the distinction between a specific criminal intent as the ultimate fact to be proved, and the evidentiary facts from which that ultimate fact is deducible.

The law is laid down more strongly by Mr. Justice Jackson in his charge to the jury in the case of the Fidelity National Banking Association of Cincinnati (*United States* v. *Harper*, 33 Fed. Rep., 471, 481–2):

> The counts relating to "false entries" charge intent to defraud the bank, or deceive its officers. What is required in order to establish this intent to "injure or defraud" the association? In directing that these offenses, or the acts which constitute them,

must be committed with intent to injure or defraud the bank, the statute does not mean that it must be made to appear that the party accused had malice or ill will towards the association. These terms, as used in the statute, mean nothing more than that general intent to injure or defraud which always arises, in contemplation of law, when one willfully or intentionally does that which is illegal or fraudulent, and which, in its necessary and natural consequence, must injure another. So that, while these offenses of embezzling, of abstracting, and of willfully misapplying the moneys, funds, or credits of the bank, and issuing and putting in circulation certificates of deposit, without authority, must be committed by the accused with intent to injure or defraud the association, *that intent* may be shown, or may be conclusively presumed, from the doing of the wrongful, fraudulent, and illegal acts, which in their necessary results naturally produce loss or injury to the association. The law presumes that every man intends the legitimate consequences of his acts. Wrongful acts knowingly or intentionally committed can neither be justified nor excused on the ground of innocent intent. The color of the act determines the complexion of the intent. *The intent to injure or defraud is presumed when the unlawful act which results in loss or injury is proved to have been knowingly committed.* This is the well-settled rule which the law applies in both civil and criminal cases involving the question of intent. Human affairs could hardly be conducted, nor civil order be preserved, under any other. * * * If it appears from the proof to your satisfaction that the accused made, or caused to be made, false entries in the books of the bank, the doing of such illegal or wrongful acts will establish his guilty intent. Any and every false

> entry upon the books used in the transaction of its current business is calculated either to mislead its officers or work injury to the bank; and it is reasonable to assume that the official who makes or causes such entries to be made intends what are the legitimate consequences of his wrongful act. I do not wish to be understood as meaning that the intent to injure or defraud is *conclusively established* by simple proof of the doing of the prohibited act which results in injury. What I mean is this: that when the prohibited act is knowingly and intentionally done, and its natural and legitimate consequence is to produce injury to the association, or benefit to the wrongdoer, the intent to injure or defraud is *thereby sufficiently established to cast on the accused the burden of showing that his purpose was lawful and his act legitimate.*

Justice Jackson's views are those taken also by the other judges who have had occasion to construe this paragraph of the national banking law. (*United States* v. *Lee*, 12 Fed. Rep., 816, 819–21; *United States* v. *Means*, 42 Fed. Rep., 599; *United States* v. *Allis*, *supra*, at p. 171; *United States* v. *Folsom*, 38 Pac. Rep., 70, 73; see also *Coffin* v. *United States*, 162 U. S., at p. 683; *Potter* v. *United States*, 155 U. S., 438, 448.)

They have been criticised as opposed to the general doctrine of criminal procedure, that the burden of proof is always on the prosecution. But the criticism is fallacious, as shown in the Folsom case. The prosecution has the burden of establishing every ultimate fact; but, certain evidentiary facts being proved, the ultimate facts may become a necessary inference, unless the evidence is in some way met.

In concluding, it may be remarked that many of the exceptions taken by defendant relate to one or two counts only of the indictment; and that sustaining such an exception would not necessitate a new trial as to the whole case. (*Ballew* v. *United States*, 160 U. S., 187, 203; *Putnam* v. *United States*, 162 U. S., 687, 714.)

It is respectfully submitted that the judgment should be affirmed.

EDWARD B. WHITNEY,
Assistant Attorney General.

165-323

165-323

In the Supreme Court of the United States.

OCTOBER TERM, 1896.

RUFUS E. GRAVES, PLAINTIFF IN ERROR,
v.
THE UNITED STATES.
No. 31.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

PETITION FOR REHEARING.

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IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

PETITION FOR REHEARING.

The defendant in error, believing the decision in this case to have been due to an oversight, respectfully submits this petition for a rehearing.

Plaintiff in error was convicted, among other things, for making a false entry in a national-bank report with intent to deceive any bank examiner and to deceive certain officers of the bank and others.

The false entry was under the heading of "overdrafts." He omitted to enter about $20,000 of overdrafts, putting them elsewhere under the head of "loans and discounts." The distinction between them and the overdrafts which he entered was that they had been "arranged for," while

the overdrafts entered by him as such had not been; in other words, that leave had been obtained to overdraw beforehand. None of them are claimed to have been secured by collateral.

Plaintiff in error claimed on the trial, first, that the omitted overdrafts were not overdrafts within the meaning of the Comptroller's requirements; second, that such was his own understanding, so that he was not chargeable with criminal intent.

Upon the first point the trial judge charged squarely against him. If an overdraft is not an overdraft within the meaning of the Comptroller's requirements when leave has been previously obtained to overdraw, then this judgment must be reversed.

Upon the second point, however, we understand the judge to have left the case fairly to the jury in certain passages which are not referred to in the opinion of this court and which we suppose to have been overlooked.

It is to be borne in mind that the trial was very long, going over a vast deal of matter irrelevant to the questions upon which it finally turned, and thus necessitating a long and careful charge in order to sift the evidence for the jury. The printed transcript of record does not adequately show the situation in this respect, since large portions of the evidence as filed here were omitted in printing by stipulation of counsel; and the filed record in turn shows that large portions were not incorporated in the bill of exceptions at all.

In arranging his charge, the learned trial judge first discussed the question whether or not the entries were false, and then took up the question of intent.

This court, in its opinion filed February 15, 1897, quotes the language of the trial judge in a portion of paragraph 27 of the charge (pp. 99, 100). After stating the facts, this passage is as follows (the italics being those of this court):

> Now, there is no difficulty in understanding what an overdraft is. There is no conflict in the testimony on this point. The books of the bank, as testified to by defendant and by all the witnesses, and as themselves in evidence before you, show that an overdraft occurs whenever a depositor overdraws the amount of his deposit. I deposit in a bank a thousand dollars subject to be checked out. I commence to check it out; and whenever the amount of my checks paid by the bank exceeds the amount of the funds I have deposited, an overdraft occurs in my account, and such overdraft is the amount the bank has thus paid over and beyond the amount I have deposited.
>
> Where, then, in the report to the Comptroller should these overdrafts appear? You will find, upon looking at the report made to the Comptroller, that it contains a heading called "overdrafts." This heading is "overdrafts," plainly and simply, and without more "overdrafts." *This is the form the Comptroller has prescribed, and which it was the duty of the defendant to follow and to enter correctly and truthfully whenever he made an entry in said report with regard to the condition of the bank as to overdrafts.*
>
> Counsel for defendant have argued to you that an overdraft is, in fact, a loan, and that, therefore, the defendant was justified in including "overdrafts" in "loans and discounts." But the Comptroller demanded that the bank should report "overdrafts" in one place in the report as well as "loans" in

another place. Defendant assumed to report "overdrafts." Did he make a true entry thereof? No explanation on the report advises the Comptroller that the entry as to "overdrafts" is an impartial or incomplete entry as to "overdrafts" actually existing at the time the report assumed to give them.

There is no separate heading of "overdrafts arranged for" in the report.

This court comments upon the passage as follows (the italics being ours):

> The effect of this charge was to tell the jury in substance that the plaintiff in error was required by the law to place under the heading "overdrafts" the full sum which the bank books showed had been drawn out by the depositors of the bank over and above the amounts which they had severally deposited therein; that a failure to do this was a failure to comply with the law, and that a transfer of any portion of such excess from the heading "overdrafts" to the heading "loans and discounts" was the making of a false entry, and under the general directions of the charge, if intentionally and wilfully made, it was a violation of the statute and a crime on the part of the plaintiff in error. *It took away from the jury the right to even consider, upon the question of intent, the explanation given by the plaintiff in error* for his changing the twenty-thousand-dollar item from under the heading "overdrafts" to that of "loans and discounts."
>
> If the jury believed the testimony given by the plaintiff in error in regard to the arrangements which had been made by certain depositors in the bank with its proper managers to give them credit at the bank for a larger sum than appeared on the credit side of their accounts, up to a certain amount and for a certain time, and if under such circumstances

> the plaintiff in error made the entries *in good faith and in the belief of his right so to do*, they were not false entries within the meaning of the statute, and he was not guilty of a violation thereof in making them. The charge of the learned judge substantially took away this defense and held the plaintiff in error guilty if he knowingly and wilfully placed the alleged overdrafts under the heading of loans and discounts, a fact about which there was no dispute, ignoring thereby the right of the plaintiff in error to have the jury pass upon the question whether they had been arranged for in good faith as demand loans.

We do not understand this court to hold that the trial judge was in error in charging that overdrafts are overdrafts, whether leave to overdraw is given beforehand by fellow-directors (these were nearly all by or for the benefit of plaintiff in error and two of the other directors) or by the paying teller at the time of their presentation, by honoring them; or that he was in error in assuming that the interpretation of the comptroller's blank form for bank returns is a question of law for the court. (*United States* v. *Allis*, 73 Fed. Rep., 165, 178). We understand the holding to be that on the issue of good faith the plaintiff in error had the right to urge the practice of his bank, and also any other considerations tending to show that he might have mistaken the meaning of the Comptroller's requirements.

The trial judge, however, charged later that intent to deceive was a necessary element in the case. We cite the following from paragraph 42 (page 108):

> If the jury do not find in any one of the two reports above described that defendant made any

false entry charged in the indictment as the same is submitted to you, and as the term false entry has been hereinbefore described and defined, you will proceed no futher in your investigations; for the making of such false entry therein is, as heretofore stated, essential to the finding of defendant's guilt. If he made no false entry, he is not guilty of the crime charged and must be acquitted.

But if you should find, within the instructions above given you, that defendant did make any such false entry as to the particulars above stated, and within the meaning of the term as I have defined it to you, *then you will proceed to consider the second and remaining point*, which the Government must prove to entitle it to a verdict of guilty, viz:

Did defendant make such false entry or entries, or any of them, with intent to deceive any agent appointed to examine the bank's condition, or to deceive some one or more officers of said bank, or to defraud said bank or any other corporation or firm or person?

And if the jury find such intent, in any manner as charged, is proven against defendant, this finding, in connection with finding defendant made the false entry as above defined, will authorize a verdict of guilty against defendant. But *if the jury do not find proven against defendant any such intent, the defendant must be acquitted.*

In paragraph 32 (pp. 103–4) the jury were instructed with care as to the evidence upon which they were asked to find innocent intent as to these overdrafts:

Testimony was offered by defendant as affecting this manner of dealing with overdrafts, in which offer it was attempted to show that other banks had been doing and were at the time pursuing in their reports to the Comptroller the same methods claimed

to have been pursued by this bank. But the court refused to permit the introduction of the evidence thus offered for this purpose. The court could not permit the practice of any other bank official in this regard to be considered by the jury as justification to defendant in his action. Two wrongs never made a right. Defendant must be judged by you on this point by the application of the law to the facts proven in this case. You will not, therefore, consider, *as making right any wrong entry made by him*, any testimony with reference to what any other bank did or may have done in this matter. *But the court permitted defendant to show these for the purpose of possibly bearing on the question whether by what defendant entered as to overdrafts the defendant intended to defraud or deceive any of the parties named in the indictment.* And *any knowledge defendant had on this point as to the said practice of any other bank may thus be considered by you when you come to consider the question of defendant's intent in this matter*, and no further.

This petition is submitted on account of the very great importance of the case in its bearing upon prosecutions of bank officers. Fraudulent entries, concealing the illicit assistance rendered to themselves by bank officers, cause ruin to thousands of our fellow-citizens and injury to American credit. Criminal prosecutions are rendered difficult by the difficulty of explaining matters of account to a jury and the ease with which the culprits are thus able to "plead the baby act." If every paragraph of the court's charge must contain every qualification necessary to protect the defendant's rights, it is submitted that the instructions will be less clearly understood by the jury than under the form adopted in this